

1 [The R.M.C. 803 session was called to order at 0834, 28 July 2008.
2 All parties present when the commission recessed on 25 July were
3 present with the exception of the members, who were present. Mr.
4 Corn, a defense witness, was present via VTC.]

5 MJ [CAPT ALLRED]: The court's called to order.

6 Good morning. Are there any matters we need to pick up
7 before we call the members into the courtroom?

8 TC [LCDR STONE]: Yes, sir, if we may.

9 MJ [CAPT ALLRED]: Um-hum.

10 TC [LCDR STONE]: The prosecution would like to challenge this
11 witness and what he intends to say today, basically under the grounds
12 of 401, 402, 403, as well as Military Commission Rule 702, in that,
13 one, his testimony that will be offered invades the purview of the
14 military judge.

15 Secondly, it will also confuse the members and based
16 primarily on the fact that Professor Corn will--proffers that
17 operational rules of engagement is a de facto indicator of armed
18 conflict and that this is not an accepted position within the
19 international community.

20 He is--it is not--there's not scholarship on the article.
21 He personally hopes that this will be a movement to the trend and----

22 MJ [CAPT ALLRED]: Hopes, what?
23

1 TC [LCDR STONE]: That he hopes that his article will be a
2 movement to create a trend in which status-based ROE and the movement
3 to status-based ROE will be the de facto determination of armed
4 conflict. That is not the legal standard right now. It was not the
5 legal standard in *Hamdan v. Rumsfeld*, which said it was governed by
6 Common Article 3.

7 And in support of that, we would also say, his article,
8 which will be the substantial basis of his testimony, reflects this,
9 where he says on page 64, he has a proposal to adopt such standards.
10 On page 68, he suggests the adoption of a six-point Executive Order
11 to create this as a new triggering paradigm. And he recognizes on
12 page 70 that he is actually advocating for this, not that it is the
13 proposed standard on the determination of armed conflict.

14 Because of that, we feel that discussion of status-based
15 ROE from an expert in the law of war will confuse the jury. It's
16 unnecessary at this time.

17 I would also cite to the case *Speck versus Jenson*, where it
18 talks about: An attorney can't state his personal views of the law
19 which governs that verdict. And what we have here would be Professor
20 Corn advocating as an expert witness his view that status-based ROE
21 is the determination of armed conflict, in contradiction of Geneva
22 Common Article 3, as well as set forth not only by the military
23 Commission's Act but also very specifically this court's

1 determination of jurisdiction and--well, just those; Military
2 Commission's Act, *Hamdan v. Rumsfeld*, and Common Article 3 and the
3 plain language of Common Article 3.

4 So we believe he should not be allowed to testify regarding
5 his proposal for a new standard.

6 MJ [CAPT ALLRED]: Well, okay. We'll see what the defense has
7 to say to that.

8 CDC [MR. MCMILLAN]: Good morning, Your Honor.

9 MJ [CAPT ALLRED]: Good morning.

10 CDC [MR. MCMILLAN]: The prosecution is attempting to
11 re-litigate the same motion that was presented to you several months
12 ago. The proffer of testimony from Professor Corn is precisely the
13 same as it was in the motion to--at the time that the motion was
14 litigated. And there is a June 13th order with your signature on it,
15 which recognizes that the testimony that Professor Corn proposes to
16 provide, and you summarized it correctly in your order as Professor
17 Corn will testify regarding a number of objective factors tending to
18 indicate whether state of armed conflict exists, including scope,
19 intensity, duration of hostilities, whether armed groups control
20 territory, demonstrating other aspects of sovereignty, and so forth.

21 You then held that the Government must prove that the
22 actions took place in the context of armed conflict. To do so, it

1 intends to call witnesses, including expert witnesses, testifying
2 regarding facts indicating an armed conflict.

3 You wrote, quote, "Professor Corn will counter this
4 evidence with his own testimony regarding other factors suggested
5 that there was no state of armed conflict during all or part of the
6 charged period".

7 The *Hamdan v. Rumsfeld* case does not set out any authority
8 on when an arm conflict exists in any binding fashion. That was also
9 litigated earlier this year in this court.

10 Common Article 3, although I'm not able to quote it off the
11 top my head, does not purport to list out any set of criteria
12 determinative of when a state of armed conflict exists in a non-
13 international context. It sets out a set of protections, baseline
14 minimum protections that must be forwarded in that context.

15 Professor Corn will be talking about contemporary standards
16 under current international law, which are objective, pragmatic, de
17 facto conditions about when armed conflict exists. They include
18 standards you identified in your order of scope; duration and
19 intensity.

20 He also has a--an insight that one telling tool for
21 assessing the de facto objective conditions on the ground is to look
22 at Rules of Engagement, and that is--that is perfectly consistent in
23 the spirit of the international law as it currently exists, which

1 will not look to propaganda, political statements, but will look to
2 whether actual hostilities are under way.

3 Rules of Engagement are one, not the only, but one factor
4 that are indicative of what's actually happening on the ground. This
5 is not an effort by this expert on the law of war to try to promote a
6 pet theory, so----

7 MJ [CAPT ALLRED]: Well, as I remember, the motion was
8 litigated, I--I was not going to allow Professor Corn to be an expert
9 on international law. I--I will be the one who instructs the members
10 on the law.

11 And to the extent you proffer him to teach them about the
12 international law, I'm going to be reluctant to let him testify.

13 I do think it's fair for him to talk about objective
14 factors that might indicate whether or not a period of armed conflict
15 existed, including what the rules of engagement were at any
16 particular time and place.

17 CDC [MR. MCMILLAN]: The situation is unchanged from the date of
18 the June 13th letter in that regard, Your Honor.

19 MJ [CAPT ALLRED]: Okay. Well----

20 TC [LCDR STONE]: If I may have Professor Corn's article where
21 he proposes a new standard marked as the next Appellant Exhibit and
22 pushed to you for--to review those sections of----

1 MJ [CAPT ALLRED]: ----I have not had time to review a 70-page
2 law review article this morning, with the witness standing here ready
3 to testify and the members in the next room.

4 TC [LCDR STONE]: I would just like to have it marked and--
5 marked as the next Appellant Exhibit for the record.

6 MJ [CAPT ALLRED]: What good will that do?

7 TC [LCDR STONE]: Just create the record, sir----

8 MJ [CAPT ALLRED]: ----create the record?

9 TC [LCDR STONE]: ----with regards to his--his standard of--and
10 how he intends to----

11 MJ [CAPT ALLRED]: ----Well, I don't think it makes any sense to
12 have something attached as an appellate exhibit if no one is going to
13 read it.

14 TC [LCDR STONE]: Okay.

15 MJ [CAPT ALLRED]: We might have taken this up last week. I
16 might have had time to read it.

17 What I would prefer to do, your--your objections are under
18 Rules 401, 402, 403, and what was the last one?

19 TC [LCDR STONE]: 702 with regards to the--401, 402, 403 on the
20 relevancy and the invasion and confusion of the jury--testifying to
21 invade the purview of you as the military judge to instruct on the
22 law.

1 And then under 702, that he is--that he is really
2 effectively pushing his opinion with regards to an international
3 standard; and in doing so, it has not risen to the level of
4 international law, and that it should not be allowed to go to the
5 jury. And then that pushes back into the 403 argument, because then
6 that would then confuse them on the standard.

7 MJ [CAPT ALLRED]: Okay. Well, Rule 401 describes relevant
8 evidence.

9 TC [LCDR STONE]: Right.

10 MJ [CAPT ALLRED]: My sense is that testimony about the rules of
11 engagement and what rules of engagement were in play between 1996 and
12 2001 would be relevant to a determination of whether or not a period
13 of armed conflict existed. So I'll overrule that objection.

14 402 makes irrelevant evidence inadmissible. Because this
15 seems relevant, I don't find that to be a valid objection.

16 403 allows me to exclude relevant evidence if it would
17 confuse the members' prejudice, the issues, or waste the Court's
18 time, and I'll overrule that objection.

19 But with regard to 702, I'm not going to allow him to push
20 his opinion about an emerging international standard that he wants us
21 to adopt.

22 I'll allow him to testify about the rules of engagement,
23 what they were, when they were, what they mean. And if you have an

1 objection during the course of his testimony if he's going too far,
2 I'll entertain that along the way. Okay?

3 TC [LCDR STONE]: Yes, sir.

4 MJ [CAPT ALLRED]: Has Professor Corn been following this, or
5 we've got the--the sound muted?

6 CDC [MR. MCMILLAN]: Professor Corn, can you hear me?

7 WIT [MR. CORN]: Yes, I've been following it, Your Honor.

8 CDC [MR. MCMILLAN]: Good morning, Professor.

9 WIT [MR. CORN]: Good morning.

10 MJ [CAPT ALLRED]: You understand the issues, Professor, and the
11 areas that counsel intend to ask you about, then?

12 WIT [MR. CORN]: Yes, Your Honor.

13 MJ [CAPT ALLRED]: Very good.

14 CDC [MR. MCMILLAN]: Your Honor, before we call in the members,
15 can I, on a technical point, make sure we have actual video that is
16 live and running? Although we have audio, it's a single, still
17 image.

18 MJ [CAPT ALLRED]: Professor Corn, could you move so we can tell
19 whether the picture on the screen is you or----

20 CDC [MR. SWIFT]: Memorex.

21 WIT [MR. CORN]: I'm waving.

22 MJ [CAPT ALLRED]: Okay. We don't have any video, apparently.
23

1 CDC [MR. MCMILLAN]: There was an occasion where we might need
2 to reconnect the call; a few moments ago it seemed to be able to be
3 done without too much difficulty.

4 CDC [MR. SCHNEIDER]: No one has ever sat that still, with the
5 exception of Mr. McMillan, in all the years I've know him.

6 **[VTC was reconnected by the courtroom technician.]**

7 TC [LCDR STONE]: Sir, one other thing. This--Professor Corn is
8 being called by the defense, has been taken out of order.

9 MJ [CAPT ALLRED]: Thank you; I'll mention that to the members.

10 Professor Corn, are you still able to hear us?

11 WIT [MR. CORN]: **[No response.]**

12 MJ [CAPT ALLRED]: Professor, we can see you moving now. Can
13 you hear us?

14 WIT [MR. CORN]: I can hear you. Can you hear me?

15 MJ [CAPT ALLRED]: Yes. Looks like we're connected again. Are
16 we ready to call the members into the courtroom?

17 CDC [MR. MCMILLAN]: Yes.

18 MJ [CAPT ALLRED]: Bailiff, please call the members.

19 BAILIFF: All rise **[all persons did as directed and the members**
20 **entered the courtroom].**

21 **[The R.M.C. 803 session terminated and the military commission**
22 **commenced at 0850, 28 July 2008.]**

23 MJ [CAPT ALLRED]: Please be seated **[all persons did as**

1 **directed].**

2 Good morning. We're going to take a defense witness out of
3 order. He's testifying from Madrid, I believe. This is the only
4 time we could catch him in his schedule, so this is a defense
5 witness.

6 Trial Counsel, would you please swear the witness?

7 **GEOFFREY S. CORN, Civilian, was called as a witness for the defense**
8 **via video teleconference, was sworn, and testified as follows:**

9 **DIRECT EXAMINATION**

10 **Questions by the trial counsel:**

11 Q [LCDR STONE]: Please take a seat **[did as directed].**

12 And then state your name, spelling your last name.

13 Your witness.

14 A [MR. CORN]: Geoffrey S. Corn, C-O-R-N.

15 **Questions by the civilian defense counsel:**

16 Q [MR. MCMILLAN]: Good morning, Professor. My name is Joe
17 McMillan, and I'm counsel for Defendant Salim Hamdan. Let me begin
18 first by thanking you for taking time out of your travel schedule to
19 testify from overseas.

20 Professor, can you begin by identifying your current
21 employer and the position you hold.

22 A [MR. CORN]: I'm an Associate Professor of Law at South Texas
23 College of Law in Houston, Texas.

1 Q [MR. MCMILLAN]: And we'll go over it in more detail in a
2 moment, sir; but very briefly, you also served for over 20 years in
3 the United States Army; is that right?

4 A [MR. CORN]: That's correct. I enlisted in the Army in 1983,
5 attended Officer Candidate School, spent five years as a tactical
6 intelligence officer, went through the funded law program, and served
7 to the 21-year point as a Judge Advocate General Corps Officer, and
8 then spent one year as a Department of Defense civilian working at
9 the Pentagon in the Office of Judge Advocate General.

10 Q [MR. MCMILLAN]: And at what rank did you retire, Professor?

11 A [MR. CORN]: Lieutenant Colonel.

12 Q [MR. MCMILLAN]: Professor, I've explained to you that one of
13 the issues in this case is the date on which an armed conflict with
14 al Qaeda began; is that correct?

15 A [MR. CORN]: Yes.

16 Q [MR. MCMILLAN]: And you've been asked by the defense to
17 testify regarding factors suggestive of whether there was or was not
18 an armed conflict under way with al Qaeda in the period prior to
19 9/11; factors indicating the existence of an armed conflict, correct?

20 A [MR. CORN]: That's correct.

21 [END OF PAGE]

1 Q [MR. MCMILLAN]: And are you able to do that based on your
2 training and experience and any investigation that you may have felt
3 was necessary?

4 A [MR. CORN]: I think I am.

5 Q [MR. MCMILLAN]: Okay. Well, let's talk a little about your
6 training and experience beginning with your undergraduate degree.
7 You received a B.A. in History from Hartwick College in New York in
8 1983; correct?

9 A [MR. CORN]: Yes.

10 Q [MR. MCMILLAN]: And what did you do after obtaining that
11 undergraduate degree?

12 A [MR. CORN]: Well, that's the point where I decided I wanted
13 to be an Army officer, and the only path for me to do that was to
14 enlist in the Army as a private and then attend Officer Candidate
15 School.

16 So in the fall of 1983, I went to basic training at Fort
17 Leonard wood, Missouri, and upon completing basic training I went to
18 Fort Benning, Georgia to attend Officer Candidate School. I
19 graduated there on June 1st, 1984 with a commission as a Second
20 Lieutenant in the MI Branch. Attended the MI officer Basic Course,
21 Basic Airborne training, and then I was assigned to the 193rd
22 Infantry Brigade (Light) in Panama.

1 I spent approximately three and a half years in Panama in
2 various positions as a tactical intelligence officer from the--what
3 is now USARSO level--I'm sorry.

4 Q [MR. MCMILLAN]: Well, let me ask you to----

5 A [MR. CORN]: Do you want me to----

6 Q [MR. MCMILLAN]: ----yeah, let me ask you to just describe
7 some of your responsibilities as a tactical intelligence officer
8 during that period of your career.

9 A [MR. CORN]: Well, a tactical intelligence officer's
10 responsibility is basically to provide the supporting commander and
11 staff with intelligence necessary for them to plan and execute their
12 missions. It's based on this concept, at least when I was trained,
13 of intelligence preparation in the battlefield.

14 It involves everything from participating in exercises
15 where you're trying to predict enemy courses of action, and assist
16 the operations officer in performing the most effective course of
17 action to recommend to the commander, to being involved in training,
18 familiarization of enemy weapons, maintenance of equipment assigned
19 to your--your personnel; a variety of issues.

20 And in Panama I was--I left Panama before Operation Just
21 Cause, but I was in Panama when the situation with General Noriega
22 deteriorated. And at that point, I was assigned to the 1st of the
23 508 Airborne Infantry Battalion, and our focus became very

1 significant real-time day-to-day threat assessment on what threats we
2 were going to confront from the Panamanian Defense Force and their
3 ostensible Cuban sponsors at that point.

4 Q [MR. MCMILLAN]: Okay. And then after leaving Panama, you
5 were accepted into the Judge Advocate General Corps; is that correct?

6 A [MR. CORN]: Well, first I attended the Intelligence Officer
7 Advanced Course. I was trained as an imagery analyst. And while I
8 was in that course, I learned that I was accepted for the funded law
9 program, and so for the next, basically three and a half years I was
10 a law student at George Washington University. I graduated in 1992
11 with a J.D., with highest honors, and then began my service as a
12 Judge Advocate General's officer by attending the JAG basic course;
13 and then my first JAG assignment was with the 101st Airborne Division
14 at Fort Campbell.

15 Q [MR. MCMILLAN]: And can you just briefly describe your duties
16 at Fort Campbell with the 101st.

17 A [MR. CORN]: I began, as most JAG officers do, as a legal
18 assistance attorney. I did that job for about five months, and then
19 I was moved to the criminal law division. Because of a personnel
20 shortage, I quickly ended up as the Chief of Criminal Law for that
21 office. And in that capacity I also was the trial counsel for the
22 Division Support Command and the 3d Brigade of the 101st Airborne
23 Division, the Rakkasan.

1 So my primary focus was on the--the disposition, processing
2 of criminal law issues, and the development of the attorneys that
3 worked in that section; but my secondary function was to be a legal
4 advisor to the brigade and the DISCOM in their training for
5 operational missions.

6 Q [MR. MCMILLAN]: Okay. And did you then go on to obtain an
7 advanced law degree?

8 A [MR. CORN]: After leaving the 101st in 1996, that summer I
9 moved to Charlottesville, Virginia, where I attended the Judge
10 Advocate Graduate Course, and I earned a Master's of Law degree with
11 an emphasis in International and Operational Law.

12 Q [MR. MCMILLAN]: And you graduated first in your class out of
13 approximately 80 military judge advocates from all branches of the
14 service; is that--is that right?

15 A [MR. CORN]: That's correct.

16 Q [MR. MCMILLAN]: And you received an award for Outstanding
17 Achievement in International Law at that time; correct?

18 A [MR. CORN]: Correct.

19 Q [MR. MCMILLAN]: So, Professor, was it at this period in your
20 career that your focus on the international law was really more
21 pronounced?

22 A [MR. CORN]: I would say that--that was the point in my career
23 where my primary focus professionally shifted from Criminal Law to

1 International Law. And following graduation, I stayed at the school
2 as a faculty member in the International Operation of Law Division
3 for three years.

4 Q [MR. MCMILLAN]: And did you teach courses--well, to whom were
5 you teaching courses at that school?

6 A [MR. CORN]: Three primary audiences. I'd say the flagship
7 program is the masters of law program. So we teach courses to all of
8 the graduate students, core courses, and then we teach--we taught
9 electives to students with a particular interest in international
10 law. I think electives I taught were advanced topics in the law of
11 armed conflict, a comparative law course, an advanced international
12 law course, and an operational law seminar.

13 We also teach the basic course, which are the new judge
14 advocates, and we teach what we call continuing legal education
15 courses, which are serving judge advocates both from the active and
16 reserve component and from the civilian component who return to the
17 school periodically for courses to enhance their expertise. And the
18 two courses we taught in that realm were a law of war workshop and an
19 operational law seminar.

20 Q [MR. MCMILLAN]: Did you publish articles on law of armed
21 conflict issues during this period?

22 A [MR. CORN]: I did. That's the point in my career where I
23 first got interested in writing, I think, in publishing, and I

1 published several articles on the law of armed conflict and I think
2 one or two on a broader national security law topics.

3 Q [MR. MCMILLAN]: You also taught as a guest lecturer in
4 schools in the United States and overseas on numerous occasions; is
5 that right?

6 A [MR. CORN]: That's correct.

7 Q [MR. MCMILLAN]: Then from 2001 to 2003, you moved on to
8 another position?

9 A [MR. CORN]: Well, after I left the JAG school, I spent a year
10 at Fort Leavenworth at the Command General Staff College. I finished
11 there in May of 2001, and was assigned as the Chief of International
12 and Operational Law for Headquarters of U.S. Army (Europe). I served
13 in that capacity from 2001 'til the summer of 2003.

14 Q [MR. MCMILLAN]: To whom were you providing legal advice in
15 that position?

16 A [MR. CORN]: We provided legal--well, the--The Judge Advocate
17 for U.S. Army (Europe), who was our boss, the Colonel that we worked
18 for, was the principal legal advisor to the Commander of U.S. Army
19 (Europe), initially General Meigs and--candidly, I can't recall who
20 replaced General Meigs; a four-star Army Commander, the Component
21 Commander for UCOM.

22 I think an equally significant aspect of that office is
23 providing what we might call technical legal support to subordinate

1 judge advocate offices that are involved in the planning or execution
2 of operations. That included 5th Corps 1st Armor Division, 1st
3 Infantry Division, and all of the forces that were deployed at any
4 given time to Kosovo, Bosnia, or Macedonia.

5 Q [MR. MCMILLAN]: Did that advice involve advising on rules of
6 engagement?

7 A [MR. CORN]: Yes.

8 Q [MR. MCMILLAN]: And a whole range of operational law issues;
9 is that fair to say?

10 A [MR. CORN]: That is correct.

11 Q [MR. MCMILLAN]: Then from 2004 to 2005, what position did you
12 hold?

13 A [MR. CORN]: From 2004 to 2005, that was after I retired from
14 the Army, I was chosen as the special assistant on law of war matters
15 to Judge Advocate General of the Army, which is dual-hatted as the
16 Chief of the Law of War Branch for the Office of the Judge Advocate
17 General in the Pentagon.

18 Q [MR. MCMILLAN]: And just very briefly, what were your chief
19 responsibilities in that position?

20 A [MR. CORN]: Well, that--that job has--to--I think to best
21 explain it, within the law of war community in the Department of
22 Defense, there was--that position has always been regarded as kind of

1 one of the--a handful of key positions for really setting DoD's law
2 of war interpretation posture.

3 It was held by many years--for many years by a great
4 colleague and a true expert in the law, W. Hayes Parks. He moved
5 over to the Department of Defense General Counsel's Office. That's
6 what opened the position, and I was fortunate enough to be selected
7 for it.

8 The range of issues that we would deal with spanned the
9 spectrum from reviewing new weapons systems and ammunition to ensure
10 compliance with the law of war, to providing technical support to
11 judge advocates who were deployed all over the world--Afghanistan,
12 Iraq and various other places, helping them resolve issues they had
13 dealing with the law of war or the law of armed conflict;
14 participating as a member of the Department of Defense Law of War
15 Working Group, which is a group that is composed of representatives
16 from all the services, periodically State Department representation,
17 General Counsel's Office, Chairman's Office.

18 And it was a group that would meet usually about once a
19 week to try and, one--one, come up with consistent positions on
20 current issues of concern related to the law of armed conflict; and,
21 two, try and take a more forward-looking view and try and anticipate
22 issues that were on the horizon and begin to formulate positions on
23 those issues.

1 Q [MR. MCMILLAN]: Okay. Thank you. Can you describe what you
2 did after leaving that position as special assistant to the Judge
3 Advocate General?

4 A [MR. CORN]: Well, my ambition had always been to teach law,
5 particularly after my experience at the JAG school. It is--it is not
6 an easy field to break into after a military career. I actually made
7 an attempt at it the year that I retired and was unsuccessful. I
8 chose to take the job, the civilian job at the Pentagon because I
9 thought it was a great position. And it was about halfway through
10 that year that I was contacted by South Texas, who expressed interest
11 in me joining their faculty. And when they came forward with the
12 offer, I decided to change positions and resign from the position at
13 the Pentagon that following summer, and since then I've been teaching
14 at the law school in Houston.

15 Q [MR. MCMILLAN]: And what are the areas of teaching and the
16 scholarly interest since you joined the law school in South Texas?

17 A [MR. CORN]: Well, teaching--my--my areas of teaching focus on
18 what I would say criminal law and national security law issues. I
19 teach the basic first semester criminal law course. I teach a class
20 on criminal procedure. I teach a course on ethics for prosecutors.

21 And the national security side, I teach a seminar in
22 national security law, a seminar on the law of armed conflict, and I
23 teach in summer programs. As a matter of fact, I just completed a

1 summer course in Galway, Ireland, on terrorism and the law. I've
2 taught a course on international law in the summer.

3 From a scholarly perspective, my scholarship has focused
4 almost exclusively on national security law and the law of armed
5 conflict.

6 Q [MR. MCMILLAN]: And over the last ten years, you've published
7 numerous Law Review articles on law of war matters; correct?

8 A [MR. CORN]: Yes.

9 Q [MR. MCMILLAN]: And you've published books or book chapters
10 on international law and law of armed conflict issues?

11 A [MR. CORN]: That's correct.

12 Q [MR. MCMILLAN]: And you've published articles, as well, on
13 whether the rules of engagement can serve as a useful tool for
14 assessing whether an armed conflict exists?

15 A [MR. CORN]: I would just re-characterize it a little. I've
16 published a series of articles that have attempted to--to figure out
17 how to best determine the existence of a period of armed conflict, if
18 there's an armed conflict between a state and a non-state
19 transnational group. And the ROE issue is--is part of that--that
20 scholarly exploration.

21 [END OF PAGE]

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1 Q [MR. MCMILLAN]: When you say a transnational non-state group,
2 would that include a group like al Qaeda?

3 A [MR. CORN]: It would, and the--what I believe was the armed
4 conflict that existed between the United States and al Qaeda
5 beginning with the attacks of 9/11 was really the motivating
6 situation that--that pushed me to address these issues in this series
7 of articles, which, I may add, is going to be transformed into a
8 text--a textbook that's now under contract with Oxford University
9 Press.

10 Q [MR. MCMILLAN]: Professor, you've previously provided me with
11 a seven-page CV of your career; is that correct?

12 A [MR. CORN]: That's correct.

13 CDC [MR. MCMILLAN]: Your Honor, the defense has provided a copy
14 of Professor Corn's CV to the prosecution. We would like to request
15 that this be marked as the next appellate exhibit in order, Defense
16 Exhibit H.

17 MJ [CAPT ALLRED]: Defense Exhibit H or appellate exhibit?

18 CDC [MR. MCMILLAN]: Well, appellate exhibit in order.

19 MJ [CAPT ALLRED]: Very well.

20 CDC [MR. MCMILLAN]: Whichever the next one is.

21 MJ [CAPT ALLRED]: I think it's already an appellate exhibit
22 because it was attached to one of the motions, but it will be marked
23 as the next appellate exhibit in order.

1 Q [MR. MCMILLAN]: Professor, does the CV, your current CV,
2 provide a full list of your publications?

3 A [MR. CORN]: It provides a full list of current publications.
4 There's a couple more in the works after this summer that are not on
5 there, but they haven't been published yet.

6 Q [MR. MCMILLAN]: Does it also list the many speeches,
7 lectures, and presentations you've given on law of armed conflict
8 issues?

9 A [MR. CORN]: Yes.

10 Q [MR. MCMILLAN]: And does it identify other areas of education
11 and experience that we haven't spoken about here today?

12 A [MR. CORN]: Yes.

13 CDC [MR. MCMILLAN]: Your Honor, the defense would tender
14 Professor Corn's CV--well, Your Honor, the defense would tender
15 Professor Corn as an expert on law of war matters going to factors
16 suggesting whether state of armed conflict exists.

17 TC [LCDR STONE]: Quick couple of questions, sir?

18 MJ [CAPT ALLRED]: Certainly.

19 **VOIR DIRE EXAMINATION**

20 **Questions by the trial counsel:**

21 Q [LCDR STONE]: Good morning, Professor Corn. I'm Lieutenant
22 Commander Stone. We spoke----

23 A [MR. CORN]: Good morning.

1 Q [LCDR STONE]: ----a little bit earlier. I'm looking at
2 you're CV. I just want to see if I get this right. You became a
3 lawyer in 1993; is that right?

4 A [MR. CORN]: In 1992----

5 Q [LCDR STONE]: Okay.

6 A [MR. CORN]: ----I graduated from law school.

7 Q [LCDR STONE]: All right. And from 1993 through 1997, you
8 worked in the Crim-Law Division?

9 A [MR. CORN]: 1993 to 1996, I worked primarily as a trial
10 counsel and chief of criminal law at Fort Campbell, but also as a
11 brigade legal advisor to the 3rd brigade and the DISCOM.

12 Q [LCDR STONE]: And your chief international law experience was
13 for two years, between June of 2001 and 2003, while on active duty?

14 A [MR. CORN]: Chief experience--in a position that was
15 exclusively focused on the practice of international law, that is
16 correct. Of course, there were the three years of teaching the
17 subject prior to that and the operational and international law
18 aspects of being a brigade legal advisor before that.

19 TC [LCDR STONE]: We have no objection to Professor Corn being
20 an expert in the law of war, but we are still--renew the concern with
21 regards to what his testimony may be, but we can qualify him as an
22 expert.

23 We have no objections.

1 MJ [CAPT ALLRED]: Without objection, then, the Court will
2 recognize Professor Corn as an expert in the law of armed conflict
3 and specifically the rules of engagement, as an indicator, I think is
4 how you characterized it, of whether or not a state of armed conflict
5 exists.

6 I'll invite the government to object when they feel the
7 witness is straying outside his areas--area of expertise. Go ahead.

8 CDC [MR. MCMILLAN]: Thank you, Your Honor. The defense would
9 like to offer Professor Corn's CV as the next defense trial exhibit
10 in order, Defense Exhibit H.

11 MJ [CAPT ALLRED]: No--well----

12 TC [LCDR STONE]: I mean, we would----

13 MJ [CAPT ALLRED]: ----I don't think that's relevant evidence
14 with respect to the offenses that are before the Court, and we
15 recognized him as a----

16 CDC [MR. MCMILLAN]: Very well.

17 MJ [CAPT ALLRED]: ----expert and we'll just hear his testimony.

18 CDC [MR. MCMILLAN]: Very well.

19 [END OF PAGE]

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1 **CONTINUED DIRECT EXAMINATION**

2 **Questions by the civilian defense counsel:**

3 Q [MR. MCMILLAN]: Professor, based on your training and
4 experience that we've just reviewed, experience advising commanders
5 on law of war and on operational issues, are you able to identify
6 factors that indicate whether a state of armed conflict exists?

7 A [MR. CORN]: Well, I think the answer--the basis for that
8 answer is more than just my training and experience advising
9 commanders. It also involved my--the time I've devoted to studying
10 the law of armed conflict itself.

11 And I believe that the answer to that question is, yes,
12 that there are factors that international law establishes as relevant
13 for determining when a period of armed conflict exists, either in the
14 international sense or the non-international sense.

15 Q [MR. MCMILLAN]: So do I understand correctly, Professor, that
16 whether a state of armed conflict is deemed to exist may depend on
17 the nature of the conflict, as an international armed conflict on the
18 one hand or a non-international armed conflict on the other?

19 A [MR. CORN]: Well, I--let me try and answer that as best I
20 can. What I believe is that international law acknowledges that a
21 state of armed conflict triggers a fundamental package of rights and
22 obligations on the--for the participants in those armed conflicts.

23 The--the package that is----

1 TC [LCDR STONE]: Objection. This goes beyond his----

2 A [MR. CORN]: ----is going to be dictated----

3 MJ [CAPT ALLRED]: Just a moment, Professor. We have an
4 objection.

5 TC [LCDR STONE]: Our objection is it's--one, it's a non-
6 responsive answer, and he's actually testifying as to his opinion
7 prior to setting out what any standard may be. We would prefer that
8 he set out what the standard is to see if it comports with the law,
9 and then allow him to testify with regards to what his opinion with
10 respect to the law may be, because if he's testifying beyond that,
11 then it would be objectionable.

12 CDC [MR. MCMILLAN]: Professor--Your Honor, these are
13 foundational questions that will attempt to elicit, then, the
14 opinions for which this expert has been qualified.

15 The prosecution, of course, will have ample opportunity to
16 cross-examine, but we would respectfully request a little latitude
17 in--in establishing certain foundational issues that will allow the
18 testimony to come forth.

19 MJ [CAPT ALLRED]: I'll give you a little latitude, but I want
20 you to remember that I don't want this expert testifying about what
21 the international law is.

22 CDC [MR. MCMILLAN]: Very well.

23 MJ [CAPT ALLRED]: That invades my province.

1 CDC [MR. MCMILLAN]: Very well.

2 Q [MR. MCMILLAN]: Is it fair to say that there are different
3 factors indicating the existence of an armed conflict in
4 international conflict as opposed to a non-international conflict?

5 A [MR. CORN]: I believe that there are different analytical
6 criteria or factors that you would focus on to make that
7 determination, yes.

8 Q [MR. MCMILLAN]: Could you identify those with respect to each
9 of those two types of conflicts?

10 A [MR. CORN]: Well, as we--I'm trying to be cautious not to go
11 into territory that I think the judge has indicated I shouldn't, but
12 to frame my perspective, we start with what I would say is the basic
13 law-triggering paradigm; when two states have a dispute that results
14 in the intervention of armed forces, that is an international armed
15 conflict, and as a consequence of Common Article 2 and the customs
16 surrounding it, it brings into force the full corpus of the law of
17 armed conflict.

18 The law also acknowledges that a state can engage in an
19 armed conflict with an enemy that is not a state. That is a non-
20 international armed conflict. And--and the basis of this is Common
21 Article 3 and the custom that's emerged from it or surrounding it,
22 and it only provides that an armed conflict that's not international
23 brings into force a smaller package, if you will, of rights and

1 obligations. It does not establish a definitive or determinative--
2 determinative standard for what an armed conflict is between a state
3 and a non-state entity. It instead instructs states to focus on the
4 de facto existence of hostilities----

5 Q [MR. MCMILLAN]: The----

6 A [MR. CORN]: ----between two groups.

7 TC [LCDR STONE]: I would--I would object that he's going into
8 areas which have not been determined to be actually what the
9 instructions will be and it invades the purview of the jury--or the
10 judge in terms of instructing what the law will be or is for this
11 case, as opposed to what Professor Corn believes that it is.

12 CDC [MR. MCMILLAN]: Well----

13 MJ [CAPT ALLRED]: I'm--members of the Court, as--at the
14 beginning of this trial, I indicated to you that I would instruct you
15 on what the law is at the end of all the evidence, and each of you
16 indicated you would follow my instructions as to the law.

17 At the end of the case, I will instruct you about the law
18 that you should apply in this case. In the meantime, Professor Corn
19 is trying to help you understand some of the factors that might
20 indicate whether or not there was a period of armed conflict.

21 So I will allow you to listen to his testimony even--even
22 though it may later have to be corrected by my instructions, but I
23 will give the defense some latitude.

1 I think that I'm waiting for you to get to the discussion
2 of rules of engagement, so maybe you're still laying your foundations
3 to move into that area.

4 Q [MR. MCMILLAN]: Let me move quickly to the issue of rules of
5 engagement, Professor.

6 You mentioned the term de facto, I think, pragmatic as a
7 perspective that you thought was important in assessing whether an
8 actual armed conflict exists. And I ask you to elaborate on those
9 characteristics in assessing whether such a conflict exists.

10 A [MR. CORN]: The--in my opinion, based on my understanding of
11 the law, the Geneva Convention, particularly Articles 2 and 3 of
12 those conventions, were created in large measure to ensure that the--
13 the framework of regulatory authority provided by the law of armed
14 conflict could not be avoided by de jure characterizations or
15 political manipulations. So it adopted what virtually all experts in
16 the international community acknowledge as a de facto law triggering
17 paradigm.

18 That's why in the realm of state-versus-state conflict it
19 doesn't use the phrase war. War is a legal, internationally legally
20 charged term. It uses the term armed conflict, which was intended to
21 indicate a situation of hostilities between two opposing groups.

22 In the realm of non-international armed conflict that was--
23 that was carved out, if you will, by Common Article 3 of the

1 convention, it was--it was acknowledged in the commentary that it was
2 more complicated to determine the line between peace and armed
3 conflict because you didn't have the neatness of two state forces
4 engaging in hostilities.

5 And so the commentary provided a variety of criteria--the
6 commentary is--is the--what we might call the kind of supplemental
7 reference book for the treaty provision--a variety of instructive
8 criteria to help states and other parties determine when the line
9 between peace and armed conflict had been crossed and, therefore, the
10 minimum humanitarian protections of Common Article 3 were--were in
11 force as a matter of law.

12 Q [MR. MCMILLAN]: The----

13 A [MR. CORN]: ----what the ROE issue, the genesis of the ROE
14 focus for me is based on one of those criteria. The criteria
15 establish, one of them, which was intended to be particularly
16 instructive of this threshold, was the nature of the response that
17 the government chose in the face of this threat.

18 And in the internal context, which was the predominant
19 focus of Common Article 3, it really was a very effective de facto
20 criteria, because a state is going to intuitively respond to crime
21 with its law enforcement capability, but when there's a dissident
22 group that overwhelms that capability, then the state is going to be
23 forced to resort to military power----

1 Q [MR. MCMILLAN]: How----

2 A [MR. CORN]: ----combat capability.

3 Q [MR. MCMILLAN]: Let me just----

4 A [MR. CORN]: And the commentary----

5 Q [MR. MCMILLAN]: ----Let me just stop you just to summarize,
6 if I got that correctly, Professor. In the context of a non-
7 international armed conflict, where a state is engaged or challenged
8 or threatened by a non-state entity; was it your testimony that the
9 response of the government to that threat was an important factor
10 indicating the existence of an armed conflict in that non-
11 international setting?

12 A [MR. CORN]: Well, that was my testimony, but that doesn't
13 come from me; that comes from the commentary to the--to Article 3 of
14 the Geneva Conventions that--I'm sorry, go ahead.

15 Q [MR. MCMILLAN]: Okay. And--and then under that--some general
16 heading of the response of the government, you mention that there
17 could be a law enforcement response on the one hand or a military
18 response on the other hand; correct?

19 A [MR. CORN]: Well, that's correct. And that was the threshold
20 that the--that the drafters of the Geneva Convention, Article 3, were
21 obviously or ostensibly particularly concerned with; because if it's
22 a law enforcement issue internally, at that time, it was purely a
23 matter of domestic sovereignty. If it was an armed conflict, that

1 international law would intrude in that realm. So they needed to
2 provide some criteria for making that assessment.

3 Q [MR. MCMILLAN]: And, now, how do the rules of engagement
4 factor in to this discussion about whether a government is responding
5 with a law enforcement paradigm versus a military paradigm?

6 A [MR. CORN]: Well, to answer that question, I need to give you
7 a little bit of the genesis of where this--why I focus on rules of
8 engagement. As I said----

9 TC [LCDR STONE]: ----we would object.

10 A [MR. CORN]: ----the government response----

11 TC [LCDR STONE]: His personal opinion----

12 A [MR. CORN]: ----the government response----

13 MJ [CAPT ALLRED]: What's your objection?

14 TC [LCDR STONE]: The objection is that he, under the *Speck*
15 *versus Jensen*, he's stating his personal views of the law as opposed
16 to----

17 CDC [MR. MCMILLAN]: ----He's not giving personal views of the
18 law. It's a--it's an opinion on the utility of an analytical tool to
19 assess whether or not an objective--you know, to assess an objective
20 state of affairs.

21 MJ [CAPT ALLRED]: Ask your question again because I've
22 forgotten what it was.

23

1 CDC [MR. MCMILLAN]: My question was, how do rules of engagement
2 bear on or illustrate whether the response of a government to a non-
3 state threat has opted for a criminal paradigm or, on the other hand,
4 a military response? How does the rules of engagement indicate which
5 of these paradigms has been adopted?

6 MJ [CAPT ALLRED]: Okay. I'll let him answer that question.

7 A [MR. CORN]: Okay. As I was saying, the--my focus on the
8 rules of engagement or--or my opinion on why they are a useful
9 criteria is because it adds some flesh, if you will, to the criteria
10 provided in Common Article 3 to focus on the nature of the government
11 response.

12 In a purely internal conflict, when the government uses
13 combat military forces to respond to a threat, it is a particularly
14 effective indication that the state has crossed the threshold from
15 peacetime operations to armed conflict.

16 The problem is applying that same criteria
17 extra-territorially to a transnational enemy like al Qaeda was--was
18 somewhat hollow because our armed forces and other armed forces
19 conduct peacetime extra-territorially military missions all the time.

20 So my view was, you couldn't just ask, is the government
21 deploying forces, because we deploy forces to places like Kosovo or
22 Bosnia or Haiti in a non-conflict context, and that's really not in
23 any type of dispute.

1 So what I focused on is how does a warrior, how does a
2 soldier know when he's crossed the threshold from peacetime
3 operations to armed conflict.

4 Q [MR. MCMILLAN]: Okay. Let me stop you there, Professor.

5 A [MR. CORN]: And for me the answer was clear.

6 Q [MR. MCMILLAN]: Let me stop there, just to make sure I've
7 understood what you've said so far. Your----

8 TC [LCDR STONE]: I would object to him to--to just
9 re-testifying for what the witness has already said. I mean----

10 MJ [CAPT ALLRED]: Well----

11 TC [LCDR STONE]: ----he just asked the question. He answered
12 it. We can move on.

13 CDC [MR. MCMILLAN]: I'm--I'm simply attempting, Your Honor, to
14 place this in a question-and-answer format that will assist the
15 members in understanding the testimony.

16 MJ [CAPT ALLRED]: I'll--I'll allow you to summarize what he's
17 already testified to.

18 **[END OF PAGE]**

1 Q [MR. MCMILLAN]: Professor Corn, did--please correct me if I
2 misstate what I think I understood you to say, which is that in
3 looking at the government response to a challenge from a non-state
4 entity, the mere deployment of military forces, particularly forces
5 overseas, is not a sufficient indicator of whether armed conflict
6 exists because there are some deployments which are non-combat
7 operations; is that correct?

8 A [MR. CORN]: That is--that's an accurate summary. I mean, if
9 we look at the joint doctrine on military operations, there's a range
10 of military missions that fall below the threshold of armed conflict,
11 anything from a--a consensual non-combat evacuation operation,
12 counter drug missions, support to law enforcement.

13 So my focus, again, was if we're going to look at the
14 criteria of the government's use of military force to respond to a
15 situation to determine when there is a state of armed conflict
16 between a state and a non-state entity, we needed more than just
17 whether forces were deployed, and that's what led me to focus on the
18 authority that those forces have been granted to conduct that
19 mission.

20 Q [MR. MCMILLAN]: And----

21 A [MR. CORN]: And that authority, in my opinion--that authority
22 in my opinion, particularly for U.S. operations, comes in the form of
23 rules of engagement. And at its simplest level, all that I'm

1 suggesting is that to properly apply that--that criteria from the
2 Common Article 3 commentary, we have to look at more than just are
3 forces deployed. We have to look at what are those forces authorized
4 to do pursuant to that deployment, and that comes from analysis of
5 the rules of engagement.

6 Q [MR. MCMILLAN]: Okay. So you have made a distinction in your
7 writings between conduct-based rules of engagement on the one hand
8 and status-based rules of engagement on the other hand in order to
9 help assess whether the deployment of military forces has--is
10 actually indicative of a state of armed conflict; is that correct?

11 A [MR. CORN]: That is correct.

12 Q [MR. MCMILLAN]: Could you elaborate on that----

13 A [MR. CORN]: And the reason that I----

14 Q [MR. MCMILLAN]: Elaborate on that----

15 A [MR. CORN]: Yes.

16 Q [MR. MCMILLAN]: ----distinction between conduct-based rules
17 of engagement on the one hand and status-based rules of engagement on
18 the other hand.

19 A [MR. CORN]: Yes. In my opinion, I mean, of course the
20 standing rules of engagement is a complex directive and there are
21 many nuances to it, but essentially military forces operate under one
22 or two broad categories of rules of engagement.

1 If we think of rules of engagement as the shoot/don't shoot
2 criteria, if you're operating under conduct-based rules of
3 engagement, your shoot/don't shoot decision is dictated by what you
4 confront, the threat you face: Are you in a--facing an imminent
5 threat of death or grievous bodily harm to you or fellow members of
6 your force or some other person or thing that you're authorized to
7 defend?

8 Those are essentially self-defense ROE or defense of
9 other's ROE, and the authority to use deadly force under that
10 category of ROE is thoroughly consistent with a law enforcement
11 paradigm.

12 The other basic category of ROE, in my opinion, are
13 status-based ROE. Under status-based rules of engagement, the
14 shoot/don't shoot decision is not dictated by what the--the
15 trigger-puller is immediately confronting. It's dictated by a
16 determination that who he's observing falls into the status of a
17 hostile force, or enemy force, however it's characterized.

18 And, in essence, once that identification has been made,
19 then the authority exists to employ that threat with deadly combat
20 power.

21 Q [MR. MCMILLAN]: Okay. Let me stop you right there.

22 A [MR. CORN]: And from my perspective, what that indicates----

1 Q [MR. MCMILLAN]: Okay. Is--between conduct-based rules of
2 engagement on one hand and status-based rules of engagement on the
3 other hand, which of them is more consistent with the existence of an
4 armed conflict?

5 A [MR. CORN]: Well, I believe that status-based rules of
6 engagement are a clear indicator of the existence of armed conflict
7 for a simple reason: If you are using deadly force, combat power,
8 without any individual provocation or threat from the object of that
9 attack, you are inherently invoking the principal military objective,
10 which is a principal that comes from the law of armed conflict.

11 So if you're operating under status-based ROE, those
12 status-based ROE are derived from a theory that the law of armed
13 conflict is applicable to justify the use of deadly combat power as a
14 measure of first resort and not as a measure of last resort.

15 Q [MR. MCMILLAN]: So to apply this in a hypothetical context
16 involving al Qaeda, the non-international armed conflict that is at
17 issue in this case, if conduct-based rules of engagement are in place
18 for U.S. forces at a particular time, they are not able to initiate
19 deadly force against someone identified as al Qaeda; is that correct?

20 A [MR. CORN]: The mere identification as being al Qaeda under
21 conduct-based rules of engagement I would say would not justify the
22 immediate resort to deadly force.

1 Q [MR. MCMILLAN]: On the other hand, if status-based rules of
2 engagement are in effect at a particular time, then the mere
3 identify--the mere identification of someone as al Qaeda would
4 authorize the use of deadly force and be consistent with the state of
5 armed conflict; is that correct?

6 A [MR. CORN]: That's--that's my basic opinion, yes.

7 Q [MR. MCMILLAN]: Okay. Now, are you aware of whether any
8 unclassified or declassified rules of engagement, during the period
9 1996 to September 11th, 2001, authorized status-based targeting of al
10 Qaeda personnel?

11 A [MR. CORN]: To my knowledge, the answer to that question is
12 no, and that is in large measure on the fact that you and I have
13 discussed this issue and, based on your efforts to obtain that
14 information, you haven't been able to find any.

15 Q [MR. MCMILLAN]: If you were informed--it's a hypothetical
16 question. If you were informed that there were no rules of
17 engagement for theater commands or supplemental measures prior to
18 9/11 that authorized status-based strikes against al Qaeda, what
19 would that indicate to you about whether an armed conflict with al
20 Qaeda existed prior to 9/11?

21 A [MR. CORN]: It would indicate to me that the United States'
22 political and military leadership did not believe that it was in a

1 period of armed conflict because it had not invoked the authority of
2 that law.

3 Q [MR. MCMILLAN]: Well, what about the fact that Usama bin
4 Laden issued fatwas in 1996 and 1998 purporting to declare war on the
5 United States?

6 A [MR. CORN]: Well, first off, there's a--there's a very
7 difficult question of whether or not a non-state entity can even
8 declare war, but that's beyond the scope of the discussion.

9 I think it would be one factor but certainly not a
10 dispositive factor, and it is--it seems much more with--the assertion
11 that a period of war exists seems much more of a subject that is--or
12 an assertion that is subject to hyperbole than the de facto question
13 of what was the nature of the activities conducted by the United
14 States against this organization.

15 Q [MR. MCMILLAN]: Can you think, Professor, of any other
16 instances in the contemporary period in which an individual or an
17 organization, quote, "declares war" on a sovereign state?

18 A [MR. CORN]: Well, as I--as--when we were going over the CV,
19 as I noted, I began my career in Panama and obviously I had a strong
20 interest in what happened there. The only thing that I think comes
21 close was General Noriega's assertion, I think several weeks at
22 least, or maybe a month or two before Operation Just Cause that a
23 state of war existed between the United States and the Republic of

1 Panama. And as I recall, he had that endorsed by the Panamanian
2 Legislature. But that did not alter the nature of U.S. operations in
3 Panama. They remained self-defense, conduct-based in nature and it
4 was only after other provocations combined to lead the President to
5 decide that the Noriega Regime had to be toppled that the United
6 States shifted from this peacetime self-defense paradigm to an armed
7 conflict paradigm, declared the Panamanian defense forces hostile and
8 conducted military operations against them that began on the night of
9 19 December 1989.

10 Q [MR. MCMILLAN]: So despite the existence of these provocative
11 words, the rules of engagement in place for U.S. forces would lead
12 you to believe that a state of armed conflict did not exist, at least
13 for a month or so after those provocative words from an adversary?

14 A [MR. CORN]: That's right.

15 Q [MR. MCMILLAN]: So are--is this an example of looking at the
16 sort of objective de facto conditions in order to make a
17 determination of whether a state of armed conflict exists?

18 A [MR. CORN]: I think it is an example of the significance of
19 those de facto criteria, and I think that the Federal District Court
20 in the case of *U.S. v. Noriega*, when it ruled that General Noriega
21 was entitled to status as a prisoner of war, also determined that
22 that period of arm conflict commenced on 19 December 1989, rejecting

1 the government's assertion that there was no international armed
2 conflict.

3 Q [MR. MCMILLAN]: Okay. Professor, let me ask you to speak to
4 two instances of violence directed against the United States
5 interests by al Qaeda in the period between 1996 and 9/11, and I'm
6 referring to the bombings of U.S. embassies in East Africa in 1998
7 and the attack on USS COLE in Yemen in 2000.

8 What sort of response did you see from the United States to
9 these events and how does that bear on whether, in your opinion, a
10 state of armed conflict existed with al Qaeda?

11 A [MR. CORN]: Well, as I recall, that there was an air--a
12 missile strike that was launched against territory in Afghanistan
13 following the embassy bombings, and I don't see how that could have
14 been done without the authorization to engage in status-based
15 targeting for the purpose of that mission. So I'll assume that for
16 the purposes of that mission, the armed forces were authorized to
17 invoke the principal military objective, if you will.

18 So I think for the purposes of that attack, there was an
19 armed conflict that occurred between the United States and I assume
20 al Qaeda, although without seeing the rules of engagement it's hard
21 to tell exactly who was the lawfully authorized object of that
22 attack; was it al Qaeda, was it Taliban, was it Afghanistan. But

1 I'll assume for purposes of the answer that that--that attack was a
2 period of armed conflict.

3 But that doesn't mean, in my opinion, that the armed
4 conflict persisted from that point forward indefinitely. In fact,
5 the United States has periodically asserted that an armed conflict
6 can be a very brief encounter.

7 When Bobby Goodman was shot down, the Navy pilot was shot
8 down over the Baca Valley in 1983 by Syrian forces; the U.S. position
9 was there was an armed conflict that lasted for the duration of that
10 missile shoot. It ended at the end of the missile shoot. Therefore,
11 he was a prisoner of war entitled to immediate repatriation. We
12 didn't say that, because a missile was shot, a period of armed
13 conflict continued.

14 So I think what you have to do is ask whether the
15 authorization for status-based targeting, if it did exist for the
16 purpose of that missile shoot, was an authorization that remained in
17 force following that point. If it did, then my argument would be
18 that supports the conclusion that we were in a period of armed
19 conflict with this entity; if it didn't, then what I believe what it
20 indicates is that, for purposes of one mission, our government
21 shifted its legal authority from a law enforcement paradigm to an
22 armed conflict paradigm and then reverted back to the law enforcement
23 paradigm.

1 And as I recall from the USS COLE, the lead government
2 entity to respond to that, that incident, was the Federal Bureau of
3 Investigation under the Attorney General. Again, an indicator that
4 the government was not invoking the authority of the law of armed
5 conflict but was treating this primarily as a criminal matter.

6 Q [MR. MCMILLAN]: Are you aware of whether there was any
7 military response in the period following the attack on the COLE in
8 October of 2000?

9 A [MR. CORN]: To my knowledge, there was no combat military
10 response to any al Qaeda entity at that point.

11 Q [MR. MCMILLAN]: Now, do you believe there was a paradigm
12 shift that occurred with the 9/11 attack from what once--one
13 paradigm, criminal, to another, the military?

14 A [MR. CORN]: I--I do believe there was a shift in the nature
15 of the legal authority invoked by the United States to respond to
16 this threat; that prior to 9/11, the authority that we were
17 responding with was primarily a law enforcement authority, and that
18 after 9/11, because of the scale, the intensity, the nature of the
19 organization that we determined we were facing, the President, the
20 Congress, and ultimately the judicial branch of our government made a
21 decision to invoke the authority of the law of armed conflict to
22 justify attacking, destroying and disabling this transnational armed
23 entity.

1 And that in and of itself, I would add, is an extremely
2 controversial proposition in the international legal community. I
3 think, though, that, again, the purpose of the law of armed conflict
4 is to provide a regulatory framework for forces when they are engaged
5 in hostilities. And to deny that we--we unleashed the power of the
6 armed forces to engage in combat operations against this entity I
7 think is naive, but I think that that occurred in response to those
8 attacks.

9 Q [MR. MCMILLAN]: Professor, if--this is a hypothetical
10 question. If an examination of the Rules of Engagement at CENTCOM
11 revealed that status-based targeting against al Qaeda first appears
12 on October 2nd, 2001, what does that--how does that affect your
13 opinion as to when an armed conflict existed between the United
14 States and al Qaeda?

15 A [MR. CORN]: Well, I--obviously, based on everything I've said
16 so far, I think that is a clear indication that the United States had
17 invoked the authority of the law of armed conflict at that point in
18 time as a basis for operations against al Qaeda. It indicates that
19 we had chosen and invoked the authority to--to use military power to
20 kill members of al Qaeda as a measure of first resort.

21 And the use of military power to kill as a measure of first
22 resort is only authorized under the law of armed conflict. So it
23 indicates that that's the point where the armed conflict between

1 these--this state and this non-state indeed began. And--and at that
2 point all the obligations and responsibilities derive from that law
3 and the authority came into force.

4 Q [MR. MCMILLAN]: Are you aware of whether there was any demand
5 or ultimatum issued from the United States government to the Taliban
6 in Afghanistan in the immediate aftermath of 9/11?

7 A [MR. CORN]: Yes. There was a demand that the Taliban turn
8 over members of al Qaeda responsible for the tragic attacks of 9/11
9 so that they could be dealt with through the criminal process. There
10 was also a demand by the United Nations Security Council that all
11 states redouble their efforts to bring these individuals to justice.

12 Q [MR. MCMILLAN]: Why was that demand directed to the Taliban,
13 as opposed to some other group in Afghanistan?

14 A [MR. CORN]: I don't know that I can answer that question
15 without speculating. I--I had nothing to do with the demand. To me
16 what's significant about it is what it reflects as opposed to why it
17 was issued.

18 Q [MR. MCMILLAN]: Professor, do you have an opinion on whether
19 the Taliban were, in September of 2001, the de facto government of
20 Afghanistan?

21 A [MR. CORN]: My opinion is based on the official U.S. position
22 on this matter, and--and that's--and the United States determined
23 ultimately that was in fact the case, that the Taliban--that we were

1 engaged in an armed conflict with Afghanistan and the Taliban was the
2 governing power of Afghanistan. And I believe that's consistent with
3 Common Article 2 of the four Geneva conventions and the commentary,
4 which indicates that the fact that a state is not recognized by
5 another state should not deprive the participants in an armed
6 conflict to the benefit of this body of law.

7 Again, the emphasis is on de facto criteria of the
8 existence of--non-armed conflict and not de jure characterization.

9 CDC [MR. MCMILLAN]: Okay. Thank you, Professor. I have no
10 further questions.

11 **CROSS-EXAMINATION**

12 **Questions by the trial counsel:**

13 Q [LCDR STONE]: Good morning, Professor Corn.

14 A [MR. CORN]: Good morning.

15 Q [LCDR STONE]: Now, you testified that under Common Article 3
16 that the government response is one criteria, or one objective factor
17 to the existence of an arm conflict; correct?

18 A [MR. CORN]: No. I testified that pursuant to the commentary,
19 the ICRC commentary to Common Article 3, that that is an important
20 factor among other factors to consider, but that is not part of the
21 treaty provision itself.

1 Q [LCDR STONE]: Sure. Okay. So we're talking actually less
2 than an actual treaty; just the commentary associated with that
3 treaty?

4 A [MR. CORN]: Right, the commentary associated with that treaty
5 that is generally regarded in the community as authoritative on the
6 meaning of that provision.

7 Q [LCDR STONE]: Sure. Okay. And then you also state that with
8 regards to Common Article 3 and these objective factors, that in a
9 transnational event or a transnational entity such as al Qaeda, the
10 government response, in this case the United States, that response--
11 well, let me read it this way--more complicated and less reliable to
12 look at the government response when you're dealing with the
13 transnational military operations than you are in the state of
14 internal armed conflict; you would agree with that statement?

15 A [MR. CORN]: No. Let me--let me be clear on what I--what I
16 think I said and certainly what I meant.

17 The government response criteria is a question of which
18 power the government is responding with. Is it responding with law
19 enforcement capability or military capability?

20 What I said was I think that when you apply that criteria
21 or that factor extra-territorially, it becomes much less useful,
22 because governments use military capability routinely,
23 extra-territorially, for non-conflict missions.

1 So, therefore, you have to look at more than just the
2 question of whether the government is deploying the armed forces.
3 You have to look at what is it the armed forces are authorized to do
4 in conjunction with that deployment.

5 Q [LCDR STONE]: Now, remember your article, *Untying the*
6 *Gregorian Knot*?

7 A [MR. CORN]: I do.

8 Q [LCDR STONE]: In that article, don't you say that the
9 application of Common Article 3 factors, including government
10 response, is less reliable when you're dealing with transnational
11 actors, such as al Qaeda, than with a specific internal armed
12 conflict between--and the states?

13 A [MR. CORN]: Yes.

14 Q [LCDR STONE]: Yes? Okay.

15 A [MR. CORN]: I do say that. That's--that's the point I just
16 made, that you cannot just look at the modality the government uses;
17 you have to look at the authority the government invokes.

18 Q [LCDR STONE]: Right. Now, there are Pictay's case
19 commentaries to Common Article 3, you would agree with me that there
20 are other objective efforts----

21 A [MR. CORN]: There are----

1 Q [LCDR STONE]: ----as opposed to merely the government's
2 response?

3 A [MR. CORN]: That's correct.

4 Q [LCDR STONE]: Okay. One of these factors is certainly that
5 the transnational organization is well organized in a military sense;
6 correct?

7 A [MR. CORN]: No, that's--I don't--I don't believe that's an
8 accurate statement of the commentary because I don't think the
9 commentary ever contemplated a non-international armed conflict
10 outside the territory of the sovereign state. The mere suggestion
11 that you can have a non-international armed conflict against a trans
12 or an extra-territorial non-state actor, what some other people have
13 characterized as an internationalized non-international armed
14 conflict, is extreme controversial.

15 I don't think that it's--it's legitimate to deny the
16 potential that those type of armed conflicts exist, but I don't
17 think--and the article makes this clear--I don't think the commentary
18 ever contemplated this type of armed conflict.

19 Q [LCDR STONE]: Right. But you have testified that there are
20 objective criteria, including rules of engagement and the government
21 response, to determine the existence of an armed conflict with a
22 transnational actor; correct?

23 A [MR. CORN]: That's my thesis, yes.

1 Q [LCDR STONE]: Yes. And is it your thesis, then, that you
2 disagree with the idea that al Qaeda or the transnational actor, the
3 fact that they are a well-organized military force has nothing to do
4 with the existence of an armed conflict; is that your--is that your
5 testimony?

6 A [MR. CORN]: No, I don't think--I don't disagree with that at
7 all. I think that's an important criteria. And, as a matter of
8 fact, the article that was written prior to the one you're looking at
9 focused on the armed conflict between Israel and Hezbollah--
10 Hezbollah, in the summer of 2006. And I think that--that that was an
11 armed conflict governed by the law of non-international armed
12 conflict. And one of the factors there, in addition to the nature of
13 the Israeli response, was the military organization of Hezbollah, the
14 controlled territory and other factors.

15 Q [LCDR STONE]: All right. So you--and to summarize your
16 answer, well organized in a military sense, a factor to consider?

17 A [MR. CORN]: Yes.

18 Q [LCDR STONE]: Okay. Are you aware that al Qaeda had a
19 military committee during this time?

20 A [MR. CORN]: Yes.

21 Q [LCDR STONE]: Are you aware that they operated training camps
22 continuously in Afghanistan from 1992 through 2001?

23 A [MR. CORN]: Yes.

1 Q [LCDR STONE]: Are you aware that they had multiple levels of
2 training at those terrorist camps?

3 A [MR. CORN]: Yes.

4 Q [LCDR STONE]: Are you aware that they had a worldwide
5 recruitment operation where centers were set up in major European and
6 Arab cities?

7 A [MR. CORN]: Yes.

8 Q [LCDR STONE]: Cities such as Milan, London, Hamburg?

9 A [MR. CORN]: Yes.

10 Q [LCDR STONE]: And that these training camps with regards to
11 their well-organized structure had basic training, advanced training,
12 and training in chemical, biological weapons?

13 A [MR. CORN]: Yes.

14 Q [LCDR STONE]: And other criteria that is mentioned, would you
15 agree with, is that there is somewhat of a structure, command and
16 control environment as an objective factor; would you agree with
17 that?

18 A [MR. CORN]: Yes.

19 Q [LCDR STONE]: Okay. Are you aware that al Qaeda was
20 organized into a Shura Council of leaders?

21 A [MR. CORN]: Yes.

22

23

1 Q [LCDR STONE]: You're aware that this council was fluid and
2 that you could rise through the ranks in a fairly quick time?

3 A [MR. CORN]: Yes.

4 Q [LCDR STONE]: Are you aware that Usama bin Laden has been
5 described as a micro-manager, and had control of most command and
6 control operations?

7 A [MR. CORN]: No, I was not aware of that.

8 Q [LCDR STONE]: Okay. Another one of these criteria would be
9 that that--that that organization or entity controls territory to the
10 exclusion of others; correct?

11 A [MR. CORN]: In my opinion, that criteria was written and
12 anticipated to apply to a situation involving an internal dissident
13 group, not a transnational actor.

14 Q [LCDR STONE]: Okay. Fair enough. But, nonetheless, you are
15 aware that al Qaeda in 1992 through 1996 basically operated with
16 impunity in the Sudan and controlled various houses and areas? Are
17 you aware of that?

18 A [MR. CORN]: Well, you use the word impunity. I----

19 Q [LCDR STONE]: Well----

20 A [MR. CORN]: ----You----

21 Q [LCDR STONE]: ----beyond the reach of the Sudan government.

22 A [MR. CORN]: My understanding is they operated--they operated
23 with the consent of the Sudanese government.

1 Q [LCDR STONE]: And from 1996 to 2001, they operated as many as
2 15 or 20 different training camps to the exclusion of other
3 individuals and other organizations in Afghanistan, they controlled
4 this area of property? Are you aware of that?

5 A [MR. CORN]: I am, indeed.

6 Q [LCDR STONE]: This also included not just large training
7 camps but individual houses in which they trained on electronics and
8 explosives, IEDs; you're aware of that, as well?

9 A [MR. CORN]: Yes, I am.

10 Q [LCDR STONE]: And that they had a very extensive network of
11 document forgery, passports, in which they could move people from
12 country to country to operate and carry out terrorist attacks?

13 A [MR. CORN]: Yes.

14 Q [LCDR STONE]: Another one of the criteria or objective
15 criteria within the existence of armed conflict would be the fact
16 that there was a sustained military-type operations; right?

17 A [MR. CORN]: The criteria, as I recall, is sustained military
18 operations between the dissident group and government armed forces.

19 Q [LCDR STONE]: Okay. And the sustained operations would
20 include that he trained, does it not?

21 A [MR. CORN]: Again, my understanding of the commentary of
22 Common Article 3 is focused on the nature of the--the encounter or
23 the events occurring between the two sides in a disputes. And the

1 sustained military operation is focused on operations conducted
2 between government forces and an internal dissident group. For
3 example, the Colombian military armed--the Colombian armed forces
4 against the FARC.

5 Q [LCDR STONE]: Sure.

6 A [MR. CORN]: Not on the--what the non-state group or the
7 dissident group is doing.

8 Q [LCDR STONE]: Okay. And so--so actual engagements or
9 attacks, that's what you're talking about?

10 A [MR. CORN]: Hostilities between--hostilities between the
11 forces, yes.

12 Q [LCDR STONE]: Okay. So--and at that time, would you agree at
13 that time it dovetails into sort of the scope, duration, and
14 intensity of their actions against the government?

15 A [MR. CORN]: Their actions, being al Qaeda against our
16 government----

17 Q [LCDR STONE]: Whether the al Qaeda----

18 A [MR. CORN]: ----or the dissident group?

19 Q [LCDR STONE]: Whether the al Qaeda or the dissident group. I
20 mean, you would agree with me that----

21 A [MR. CORN]: Absolutely. Absolutely. The--the--the
22 commentary is attempting to provide a framework for assessing when
23 the government is no longer just enforcing its own law. And scope,

1 duration, and intensity of hostilities between the dissident group
2 and government forces is considered an important factor so that you
3 don't have a situation where the use of some combat power at Waco in
4 the Branch Davidian compound can be characterized as an armed
5 conflict only because the government called on military support to
6 law enforcement.

7 Q [LCDR STONE]: Certainly. And--well, let's look at a couple
8 of these engagements, military-type operations. You are aware that
9 al Qaeda founded the worldwide recruiting network in--starting
10 roughly in 1988 or '89, organized to conduct violent terrorist
11 attacks? Are you aware of that?

12 A [MR. CORN]: Yes.

13 Q [LCDR STONE]: Are you aware that their first attacks against
14 the United States occurred in 1991, in Aden, Yemen, where they were
15 attacking U.S. soldiers in--on leave on their route to Somalia? Are
16 you aware of that?

17 DC [MR. MCMILLAN]: Objection, Your Honor. These are facts not
18 in evidence and consequently is testifying by prosecution.

19 MJ [CAPT ALLRED]: No, no. He's asking the witness a question;
20 and if he's aware of it, then--then it becomes facts in evidence.
21 Overruled.

22 WIT [MR. CORN]: Yes, I am.

1 Q [LCDR STONE]: Are you aware that al Qaeda sent operatives
2 into Somalia during our Restore Hope operation and killed our service
3 members? Are you aware of that fact?

4 A [MR. CORN]: Yes, I am.

5 Q [LCDR STONE]: Are you aware of the Bojinka plot, in which the
6 al Qaeda operatives tried to hijack planes from the Pacific and blow
7 them up over the Pacific in route to the United States in 1994?

8 A [MR. CORN]: Yes, I am.

9 Q [LCDR STONE]: Are you aware of a foiled plot by al Qaeda to
10 assassinate President Clinton in 1995 and then in 1996?

11 A [MR. CORN]: No, I was not aware of that.

12 Q [LCDR STONE]: Are you aware of a plot by al Qaeda to
13 assassinate the Pope?

14 A [MR. CORN]: Yes, I am.

15 Q [LCDR STONE]: Now, you agree that the declaration of war in
16 1996 is in and of itself one factor that you must consider to whether
17 or not an armed conflict between al Qaeda and the United States
18 existed; correct?

19 A [MR. CORN]: No, I think in my direct testimony I--I--I
20 qualified that by indicating I'm not sure what the effect of an
21 assertion of an existence of a state of war between the non-state
22 entity and the state actually is. The discussion of declaration of

1 war in the commentary refers to--is a commentary to Common Article 2.
2 But I'll concede that it--it would be something to look at.

3 Q [LCDR STONE]: And did you not testify on direct that the
4 declaration of war was a factor but not dispositive in this armed
5 conflict?

6 A [MR. CORN]: As I just said, I'll concede that it's something
7 to look at.

8 Q [LCDR STONE]: Okay. What about the 1998 fatwa in which al
9 Qaeda said, "It is the duty of all Muslims to kill Americans and
10 civilians and plunder their money wherever they may be"? Does that
11 count?

12 A [MR. CORN]: Okay. To--you're asking me does that count.
13 Count towards what, sir? If you're asking me does that count to
14 establish existence of an armed conflict, I think that much of the
15 answer to that is dictated by the nature of the threat that that was
16 perceived to be at the time.

17 One of the most complicated issues in this whole debate is
18 trying to distinguish between acts of terrorism, which are
19 predominantly considered violations of criminal law, and acts of war,
20 which occur in the context of an armed conflict.

21 And--and I won't dispute for you when you--for a second
22 that since its inception al Qaeda has been a vile terrorist
23 organization, but my perspective is at what point in time does the--

1 does the authority that the United States is invoking to respond to
2 that threat shift from use of law enforcement capability because it's
3 treating it as an act of terror, the use of combat capability because
4 it's treating it as an act of war.

5 Q [LCDR STONE]: Okay. I understand that. So the--you actually
6 agree, then, that the embassy bombings on August 6th, 1998 that
7 killed over 200 people, mostly Kenyans, would have been considered an
8 act of war and constitutes an armed conflict?

9 A [MR. CORN]: No, I don't agree with that.

10 Q [LCDR STONE]: Okay. Constitutes nonconflict----

11 A [MR. CORN]: I don't agree with that, and I don't think that--
12 I don't think--I don't think the United States treated it as an act
13 of war constituting a state of armed conflict at the time.

14 Q [LCDR STONE]: You do recognize that we launched Tomahawk
15 cruise missiles at al Qaeda during that time?

16 A [MR. CORN]: As I said in my direct testimony, I do recognize
17 that there was a missile strike, and I assume or presume that that
18 strike was pursuant to status-based authority granted by the national
19 command authorities under the rules of engagement.

20 Q [LCDR STONE]: So----

21 A [MR. CORN]: So I think there was a period--a period of armed
22 conflict as a result of that military response, but I'm not--in my

1 opinion, that period of armed conflict did not continue indefinitely
2 until 9/11.

3 Q [LCDR STONE]: Okay. You are aware with regards to these
4 objective criteria of continuing of military operations under Common
5 Article 3 of the USS SULLIVANS' plot in January of 2000, in which al
6 Qaeda tried to destroy the USS SULLIVANS on its--as it goes into the
7 Port of Aden. Are you aware of that?

8 A [MR. CORN]: I do have a recollection of that, yes.

9 Q [LCDR STONE]: That the boat sank; not The SULLIVANS, the
10 attack boat?

11 A [MR. CORN]: I don't recall. Oh, that the attack boat sank?

12 Q [LCDR STONE]: Correct, not The SULLIVANS?

13 A [MR. CORN]: That The SULLIVANS acted pursuing--right, The
14 SULLIVANS acted pursuant to the authorization to respond to a threat
15 of imminent deadly force.

16 Q [LCDR STONE]: Actually, I don't think The SULLIVANS even knew
17 about it. The boat sank before it got--right before it got into the
18 harbor.

19 You are aware of, of course, the USS COLE attack?

20 A [MR. CORN]: I am.

21 Q [LCDR STONE]: You are aware the tragic events of 9/11?

22 A [MR. CORN]: Of course.

1 Q [LCDR STONE]: You're aware of the foiled Singapore plot in
2 which al Qaeda operatives were taken down when they were targeting
3 American service members from the USS KITTY HAWK in December of '01?

4 A [MR. CORN]: No, I'm not aware of that.

5 Q [LCDR STONE]: You're not aware of that. You're aware that
6 Richard----

7 A [MR. CORN]: In December of '01, no. I'm--I'm aware of the--
8 I'm sorry, go ahead.

9 Q [LCDR STONE]: Okay. And you are aware that Richard Reed was
10 launched from--well, Richard Reed was the shoe bomber; you're aware
11 of that?

12 A [MR. CORN]: Yes, I am.

13 Q [LCDR STONE]: And that his plot was hatched or thought up and
14 began to be executed prior to the attacks of September 11th; you're
15 aware of that?

16 A [MR. CORN]: No, I'm not.

17 Q [LCDR STONE]: And are you aware that the Zacarious Moussaoui
18 follow-on plot was also in the works prior to 9/11? Were you aware
19 of that?

20 A [MR. CORN]: I think I was aware that he was--he was operating
21 al Qaeda prior to 9/11, yes.

22

23

1 Q [LCDR STONE]: Right. And he was actually arrested on August
2 20th, 2001?

3 A [MR. CORN]: That's right.

4 Q [LCDR STONE]: Okay. As we've gone through, would you agree
5 with me that, within these objective factors, we've pretty much
6 covered them all; military sense, command and control, controls
7 territory, the exclusion that they have sustained military
8 operations, and that you should look at the scope, duration,
9 intensity of a conflict to determine the existence of an armed
10 conflict, as well as the government response?

11 A [MR. CORN]: Well, I don't think you can extricate the last
12 two, sir. You say you look at the scope, duration, and intensity of
13 the government response to determine the existence of an armed
14 conflict as well as the government response. The scope, duration,
15 and intensity factor is focused on the de facto question of whether
16 there is armed conflict hostilities between the state and the
17 dissident group.

18 And, again, I'll--I'll reiterate that these factors were--
19 were written in anticipation of an internal dissident group. And the
20 reason--if you look at the commentary, the reason that the use of
21 combat power by the state is considered such critical criteria or
22 valuable criteria is because all those other factors, even
23 collectively, could still exist when you have a situation that

1 remains under the law enforcement paradigm, when you haven't crossed
2 the threshold.

3 And that's why the nature of the government response, which
4 reveals whether or not there really are intense hostilities, if you
5 will, is so significant.

6 Q [LCDR STONE]: Okay. One more. Are you also aware that our
7 response to the embassy bombings included that we put a submarine off
8 the coast and looked to attack, further attack the al Qaeda network
9 and----

10 A [MR. CORN]: As I recall, I do--I'm sorry. I do recall
11 reading that there was the possibility of a--of a special operations
12 task force strike on the base camps was contemplated and rejected by
13 the President.

14 And, again, I think that that is a significant indicator
15 that, for purposes of that response, the U.S. did engage in an armed
16 conflict against al Qaeda at that moment.

17 Q [LCDR STONE]: And that actually comes from a Madeleine
18 Albright, who was then the Secretary of State, who testified before
19 the 9/11 Commission, that they tried to look at additional
20 operational activities but they couldn't find him because Usama bin
21 Laden was effectively hidden, and they could not get tactical
22 intelligence?

23 A [MR. CORN]: Well, I recall that.

1 Q [LCDR STONE]: Okay. So----

2 A [MR. CORN]: I recall that, yes.

3 Q [LCDR STONE]: Okay. Let's----

4 A [MR. CORN]: But, again, I think that--that your question
5 exposes the dilemma. If we are going to acknowledge that we can
6 invoke the authority of the law of armed conflict and, in essence, be
7 in an armed conflict against a non-state group, where does it begin
8 and where does it end?

9 In other situations we have a much more--a much easier time
10 in determining those points. And so I think that looking at the
11 nature of the government response and how long that authority existed
12 is an important indicator to answer that very difficult question,
13 because you don't have the benefit of alternate indicators, like a
14 capitulation agreement or like a truce or an amnesty between a
15 dissident group and an armed force.

16 Q [LCDR STONE]: Okay. I have--let's see here. Let's just talk
17 really quickly about just sort of the general nature of the rules of
18 engagement. You can have both conduct and status-based rules of
19 engagement in the context of armed conflict; correct?

20 A [MR. CORN]: Yes, you can. You can have certain missions
21 conducted under conduct-based authority and others under status. I
22 mean, that's the Marine Corps concept of the three-block war.

23

1 Q [LCDR STONE]: Sure. Would you also agree with me that one of
2 the reasons you have conduct-based rules of engagement during periods
3 of hostilities is because the enemy takes steps to hide its status so
4 you have to rely on a hostile act or hostile intent before you
5 engage?

6 A [MR. CORN]: In my opinion, that's not an accurate
7 characterization of the relationship between conduct and status rules
8 of engagement in that type of complicated environment.

9 I think what's happening in Afghanistan is an example of
10 this. Essentially--and I absolutely concede that applying the
11 status-based criteria to an entity like al Qaeda, it's much more
12 complicated than applying it to the Iraqi Armed Forces, because the
13 factors that establish status may, in fact, be conduct.

14 Well, what's happened in places like Israel and Afghanistan
15 is that individuals are connected to groups because these groups
16 engage in hostile conduct. And once you establish that connection or
17 identify that connection, you have the authority to employ deadly
18 force irrespective of whether that particular individual is at that
19 moment engaging in a hostile act. So, in my mind, that's still
20 status-based rules of engagement.

21 Q [LCDR STONE]: Okay. You would certainly agree with me that
22 at times promulgation of rules of engagement is complicated?

23 A [MR. CORN]: Yes.

1 Q [LCDR STONE]: Lots of considerations go into it?

2 A [MR. CORN]: Yes.

3 Q [LCDR STONE]: Mission roles?

4 A [MR. CORN]: Yes.

5 Q [LCDR STONE]: National planned authority roles?

6 A [MR. CORN]: Yes.

7 Q [LCDR STONE]: Threats, fear of capture?

8 A [MR. CORN]: I assume so.

9 Q [LCDR STONE]: And also you have the input from the ground

10 commanders. I mean, they get the opportunity to weigh in on what

11 rules they'll use; correct?

12 A [MR. CORN]: Yes.

13 Q [LCDR STONE]: Domestic law plays into what rules of

14 engagement are employed?

15 A [MR. CORN]: Yes.

16 Q [LCDR STONE]: Humanitarian concerns?

17 A [MR. CORN]: Yes.

18 Q [LCDR STONE]: National security policy?

19 A [MR. CORN]: Of course.

20 Q [LCDR STONE]: International law and treaty concerns always?

21 A [MR. CORN]: Yes.

22

23

1 Q [LCDR STONE]: You would agree with me that ultimately rules
2 of engagement really affect how and under what circumstance we choose
3 to engage the enemy and not whether we are justified to engage the
4 enemy?

5 A [MR. CORN]: If you are asking me do I believe that rules of
6 engagement are ultimately a reflection authority as opposed to
7 obligation, then I think I would answer that question "yes," but I
8 also think that that oversimplifies what rules of engagement reflect.

9 I think rules of engagement also reflect the authority that
10 the state invoked. And when you issue status-based rules of
11 engagement, you are essentially authorizing the use of deadly force
12 as a measure of first resort, which means you are invoking the law of
13 armed conflict. When you operate outside that context, you have not
14 invoked the authority of the law of armed conflicts. Could you? I
15 don't know.

16 Q [LCDR STONE]: Sir----

17 A [MR. CORN]: What I'm focused on is the question of have you.

18 Q [LCDR STONE]: Right. Under any operation, according to DoD
19 policy, is conducted in accordance with the law of war and
20 international obligations; correct?

21 A [MR. CORN]: No. DoD policy states that during the conduct of
22 military operations, as a matter of policy, the armed forces of the
23 United States will comply with the law of armed conflict. It doesn't

1 say that during any military operation the armed forces of United
2 States can invoke the authority after the law of armed conflict. We
3 operated--we operate today in Bosnia and Kosovo. We follow the
4 principles of the law of armed conflict, but our forces are not
5 employing combat power as a measure of first resort; they use it as a
6 measure of last resort.

7 Q [LCDR STONE]: Sure. But that is a--that is in accordance
8 with the law of war, hostile act, hostile intent----

9 A [MR. CORN]: No, it is not in accordance with the law of war.
10 No, hostile act and hostile intent suggests that you don't have an
11 enemy you're fighting, that you have to wait for somebody to pose a
12 threat to you. The first principle of the law of armed conflict is
13 the principle of military necessity, which allows you to take all
14 measures necessary that are legal to bring about the consummation of
15 your enemy. That's the source, the fundamental source of authority
16 for status-based targeting, because the opponent is a military
17 objective.

18 [END OF PAGE]

19

20

21

22

23

Q [LCDR STONE]: You have testified that with regards to the implication of Common Article 2, Common Article 3, the objective factors, your theory with regards to status-based ROE as an indication of government response, that there is a dilemma with regards to transnational actors; correct? Would you agree with that premise? That's pretty much what your law article says about it; right?

A [MR. CORN]: That's--that's correct.

Q [LCDR STONE]: Okay. Are you aware that Congress actually answered that dilemma in the Military Commissions Act?

A [MR. CORN]: I'm aware that Congress passed the Military Commissions Act that said, if you can establish an element of proof that conduct occurred in the context of an armed conflict, then it's considered by Congress to be a war crime subject to the jurisdiction of the military commission. But it's--as my understanding is that--that to convict somebody of a war crime you have to establish as a matter of fact that the conduct occurred in that context.

[END OF PAGE]

1 Q [LCDR STONE]: I'm going to summarize your testimony again.
2 Under your theory, an armed, hostile, militarily trained force that
3 is not a state actor, that declares war against a country and its
4 citizens and then begins a multi-year campaign to attack and kill
5 that country's citizens through a series of long-planned attacks and
6 openly admits that it is at war with that country, in your opinion,
7 that group is not engaged in armed conflict; is that your testimony?

8 DC [MR. MCMILLAN]: Objection, Your Honor.

9 A [MR. CORN]: Well----

10 DC [MR. MCMILLAN]: Misstates the testimony. And perhaps I'm
11 saved by the final question. It wasn't at all an accurate statement
12 of the Professor's testimony.

13 MJ [CAPT ALLRED]: Well, the Professor is free to disagree if he
14 thinks it inaccurately summarizes his testimony, but it's a fair
15 question. Please, Professor, go ahead.

16 A [MR. CORN]: No, I do not believe that accurately summarizes
17 my testimony, and the reason is because we know from history that all
18 those criteria, all those factors you just rattled off have been in
19 existence for--with organizations that this country and other
20 countries have treated as terrorist organizations and responded to
21 under a law enforcement paradigm for decades. I mean, you could be
22 talking about Hamas, you could be talking about Hezbollah. You could
23 be talking, if you take away the transnational component, about the

1 Provisional IRA. And states did not traditionally treat those
2 activities as--as the existence of a period of armed conflict.

3 That is a fairly radical, new development in the realm of
4 the law of armed conflict, that somebody like al Qaeda can be engaged
5 in an armed conflict against the United States.

6 It's the U.S. position, and I think it's the right position
7 because I think what we're doing against al Qaeda in many situations
8 is, in fact, armed conflict because we are invoking the authority of
9 the law of war to seek them out, kill them, destroy them, capture
10 them and detain them.

11 But I don't believe that it means everything we do against
12 al Qaeda falls under that umbrella, and I don't believe that just
13 because al Qaeda had that capability prior to 9/11 that it meant that
14 we were in a period of armed conflict. And the reason I say that is
15 because that is not the perception that our national leadership had
16 at that time.

17 Q [LCDR STONE]: Okay. So when they kill us, it's not armed
18 conflict; only when we respond does it become an armed conflict?

19 A [MR. CORN]: When we respond with the use of combat power
20 under the authority of the law of war, it is a de facto indicator
21 that our national leadership has determined that the nature of the
22 threat and the nature of the activity the enemy is conducting against
23 us are no longer properly treated as a law enforcement problem but

1 have risen to the level of armed conflict, yes, that's what I
2 believe.

3 TC [LCDR STONE]: Thank you, sir.

4 MJ [CAPT ALLRED]: Okay. We've been on the record for nearly
5 two hours, and if this is going to be a prolonged redirect----

6 DC [MR. MCMILLAN]: Very short.

7 MJ [CAPT ALLRED]: Okay.

8 DC [MR. MCMILLAN]: Two questions.

9 MJ [CAPT ALLRED]: Very good. Very good. Professor Corn, are
10 you okay for a few more minutes before taking a break?

11 WIT [MR. CORN]: Absolutely, sir.

12 MJ [CAPT ALLRED]: Thank you.

13 **REDIRECT EXAMINATION**

14 **Questions by the civilian defense counsel:**

15 Q [MR. MCMILLAN]: Professor Corn, Commander Stone went through
16 a list of plots and plans and events and he listed those plots and
17 plans and events as he discussed one of the objective factors
18 indicating whether armed conflict exists, namely whether sustained
19 military operations are occurring between the state on the one hand
20 and the non-state entity on the other hand. Do you recall that on
21 cross?

22 A [MR. CORN]: Yes, I do.

23

1 Q [MR. MCMILLAN]: Were there sustained military operations
2 between the United States and al Qaeda during the periods covered by
3 that long list of plots and plans and operations?

4 A [MR. CORN]: Well, I think one or two of them he mentioned
5 occurred after 9/11, and for those I would say they occurred in the
6 context of sustained military operations; but prior to 9/11, I don't
7 think--and, again, I think the ROE refers this to us--I don't think
8 the United States was engaged in sustained armed conflict, combat
9 operations against this enemy.

10 I think we treated this enemy predominantly as a terrorist
11 threat subject to our law enforcement response capability. The FBI
12 was the lead agency in responding to the threat. And after 9/11, the
13 government, I think properly and legitimately, made the determination
14 that the stakes had been raised. The nature of the threat had--maybe
15 it was something we should have recognized earlier and we didn't, but
16 for whatever reason we recognized that at that point that it--that
17 the best and most effective means to respond to it was the use of
18 combat capability under the paradigm of the law of armed conflict.

19 **[END OF PAGE]**

1 Q [MR. MCMILLAN]: Okay. Thank you. Last question. Counsel
2 for the government described certain organizational characteristics
3 of al Qaeda, such as a military committee and its running of training
4 camps in Afghanistan, which go to another objective criteria for the
5 existence of armed conflict, namely whether the non-state entity has
6 some quasi sovereign attributes or state-like attributes; is that
7 correct? Do you recall that?

8 A [MR. CORN]: Well, my understanding was he discussed them both
9 from the perspective of that factor but also from the perspective of
10 command and control capability.

11 Q [MR. MCMILLAN]: Okay. And he was asserting that al Qaeda did
12 have command and control capabilities; is that fair? Okay.

13 A [MR. CORN]: Yes.

14 Q [MR. MCMILLAN]: Okay. And my question to you is, are you
15 aware that through the late 1990s, up to and including the period
16 after 9/11, al Qaeda was aligned with the Taliban internally in
17 Afghanistan----

18 TC [LCDR STONE]: Objection, leading.

19 Q [MR. MCMILLAN]: ----against the Northern Alliance?

20 MJ [CAPT ALLRED]: Overruled.

21 A [MR. CORN]: I'm aware that the Taliban and al Qaeda were
22 operating at some points for what we might call concurrent
23 objectives. I also believe al Qaeda had its own agenda on other

1 points, and which is one of the reasons I believe it is legitimate
2 and appropriate to conclude that after 9/11 our armed conflict was
3 not only with the Taliban but was with the distinct entity of al
4 Qaeda.

5 Q [MR. MCMILLAN]: Okay. And the command and control elements
6 that al Qaeda possessed were deployed during the late '90s up to----

7 TC [LCDR STONE]: Objection, he's testifying. Ask a non-leading
8 question.

9 Q [MR. MCMILLAN]: Are you aware of whether the command and
10 control capabilities that al Qaeda possessed----

11 MJ [CAPT ALLRED]: Well, what--this sounds like a leading
12 question. Why don't you ask him it in a non-leading question; what
13 he knows about their command and control capabilities?

14 Q [MR. MCMILLAN]: My question, Professor, goes to what
15 capabilities of al Qaeda were directly against the Northern Alliance
16 among those that the prosecutor described as relevant categories
17 indicating the existence of an armed conflict?

18 A [MR. CORN]: My understanding is that the situation in
19 Afghanistan almost slipped the notion of an associated militia group
20 on its head that in many aspects of the armed conflict, the internal
21 armed conflict between the Taliban and the Northern Alliance, al
22 Qaeda actually provided command and control capability for Taliban
23 forces. We would normally expect the opposite, that the Taliban was

1 the armed forces and al Qaeda at best was a militia group fighting
2 with them subject to their command and control.

3 What my understanding is in many situations it would be
4 inverse; that the al Qaeda military capability was being used as a
5 force multiplier, if you will, for Taliban operations against the
6 Northern Alliance.

7 DC [MR. MCMILLAN]: Okay. Thank you very much. I have no
8 further questions.

9 TC [LCDR STONE]: No re-cross.

10 MJ [CAPT ALLRED]: Thank you, Professor Corn, for your
11 testimony.

12 Let me just ask the members for a moment if they have any
13 questions for you.

14 Members, are there any questions for Professor Corn?

15 MEMBERS: **[No response.]**

16 MJ [CAPT ALLRED]: Apparently not. We thank you for taking a
17 break from your trip to Madrid, or wherever you are, and wish you
18 well. We'll excuse you as a witness. Okay.

19 WIT [MR. CORN]: Thank you very much.

20 **[The witness was excused and the VTC ended.]**

21 MJ [CAPT ALLRED]: Time for a recess. We will----

22 BAILIFF: All rise **[all persons did as directed and the members**
23 **withdrew from the courtroom].**

1 MJ [CAPT ALLRED]: Why don't we come back in 15 minutes?

2 [The military commission recessed at 1035, 28 July 2008.]

3 [The military commission came to order at 1053, 28 July 2008.]

4 MJ [CAPT ALLRED]: Okay. Please be seated [all persons did as
5 directed].

6 The members have returned to the courtroom.

7 TC [MR. TRIVETT]: Sir, the government calls Mr. Evan Kohlmann.

8 MJ [CAPT ALLRED]: Evan Kohlmann.

9 EVAN F. KOHLMANN, Civilian was called as a witness for the
10 prosecution and testified under oath as follows:

11 DIRECT EXAMINATION

12 Questions by the civilian trial counsel:

13 Q [MR. TRIVETT]: For the record, please state your name,
14 spelling your last.

15 A [MR. KOHLMANN]: Yes, my name is Evan F. Kohlmann,
16 K-o-h-l-m-a-n-n.

17 Q [MR. TRIVETT]: Mr. Kohlmann, what do you do for a living?

18 A [MR. KOHLMANN]: I'm an international terrorism consultant.

19 Q [MR. TRIVETT]: And can you please explain briefly to the
20 members what that is?

21 A [MR. KOHLMANN]: Yes. I conduct research on international
22 terrorist organizations on behalf of a variety of clients. I then

1 take that information, produce analysis, produce documentation, and I
2 provide that information to, again, a variety of clients.

3 Q [MR. TRIVETT]: And do you do any work for any television
4 networks?

5 A [MR. KOHLMANN]: Yes, I do. I work on behalf of NBC, MSNBC as
6 an on-air terrorism consultant and analyst.

7 Q [MR. TRIVETT]: What's your educational background?

8 A [MR. KOHLMANN]: I have a BSFS, which is a Bachelor in Science
9 and Foreign Service from the Edmond A. Walsh School of Foreign
10 Service at Georgetown University. I also have a certificate in Islam
11 and Muslim-Christian Understanding from the Center for Islam and
12 Muslim-Christian Understanding at Georgetown University. And I also
13 have a J.D. or a juris doctorate, a law degree, from the University
14 of Pennsylvania law school.

15 Q [MR. TRIVETT]: And what was your major in college?

16 A [MR. KOHLMANN]: My major was international politics with a
17 focus on international security studies, particularly international
18 security studies in the Middle East and Muslim world.

19 Q [MR. TRIVETT]: Now, you mentioned that you had a certificate
20 in Islam. Will you please explain for the members what that is
21 comprised of?

22 A [MR. KOHLMANN]: Georgetown University has a separate center
23 within the School of Foreign Service, which is known as the Center

1 for Muslim and Christian Understanding. The Center focuses on
2 educating students on the Muslim world, on Islam. In order to
3 achieve a certificate in Islam and Muslim Christian understanding,
4 you take an entire full year of intensive Islamic history. Followed
5 by that I took class work in Islamic modernism, followed by writing a
6 Caps thesis paper.

7 Q [MR. TRIVETT]: I'll just mention again, if you could make
8 sure we stay nice and slow so the translators can translate.

9 A [MR. KOHLMANN]: Of course.

10 Q [MR. TRIVETT]: And do you see three buttons up on your stand?
11 Do you have----

12 MJ [CAPT ALLRED]: He doesn't have them.

13 Q [MR. TRIVETT]: Then I'll be sure to inform, then. The
14 buttons indicate that you're going too fast.

15 Now, Mr. Kohlmann, in your study of Islam, was learning
16 Arabic definitions part of your studies?

17 A [MR. KOHLMANN]: Yes. It was an essential part of what I do.

18 Q [MR. TRIVETT]: And why is that?

19 A [MR. KOHLMANN]: Because in order to understand Islam, in
20 order to understand the history of Islam, you have to understand the,
21 at least, basic Arabic terminology. Much of Islam is based upon
22 basic Arabic terminology.

1 Q [MR. TRIVETT]: Now, just so the record is clear, did you
2 speak Arabic?

3 A [MR. KOHLMANN]: Not fluently, no.

4 Q [MR. TRIVETT]: Are you aware of something called Center for
5 Contemporary Arab Studies at Georgetown?

6 A [MR. KOHLMANN]: Yes.

7 Q [MR. TRIVETT]: Can you please explain for the members what
8 that was?

9 A [MR. KOHLMANN]: In the School of Foreign Service there is
10 actually another separate center also dedicated to similar studies,
11 except the CCS, or Center for Contemporary Arab Studies is actually
12 dedicated rather than to the Muslim world to the Arabic world.

13 Q [MR. TRIVETT]: Now, what honors, if any, did you receive for
14 your scholarship at Georgetown?

15 A [MR. KOHLMANN]: I, first of all, graduated magna cum laude
16 from the School of Foreign Service. I also graduated with honors in
17 international politics as a result of writing an honors thesis in
18 international politics. And I was nominated by Georgetown University
19 as a Rhodes Scholar candidate.

20 Q [MR. TRIVETT]: Now, to your knowledge, while you were at
21 Georgetown, how many other students were concentrating on studying
22 Afghanistan?

23 A [MR. KOHLMANN]: I'm not familiar with any.

1 Q [MR. TRIVETT]: Now, as part of the research that you did at
2 Georgetown, did it involve the al Qaeda organization?

3 A [MR. KOHLMANN]: It was a large focus of my research, yes.

4 Q [MR. TRIVETT]: And can you please explain to the members how
5 it was that you studied al Qaeda?

6 A [MR. KOHLMANN]: The primary focus of my research at
7 Georgetown was on the Arab-Afghan movement. The Arab-Afghan
8 movement, the Arab fighters would come to Afghanistan during the
9 1980s and would form various mujahideen or holy warrior organizations
10 in order to seek political change back in their countries of origin,
11 largely through the means of violence.

12 These organizations eventually coalesced, or at least some
13 of them eventually coalesced into what we know today as al Qaeda.

14 Q [MR. TRIVETT]: While you were at Georgetown, did you write a
15 thesis called "A Bitter Harvest"?

16 A [MR. KOHLMANN]: Yes, I did.

17 Q [MR. TRIVETT]: Can you please explain to the members what the
18 crux of that thesis was?

19 A [MR. KOHLMANN]: While at Georgetown, I--one of the subjects
20 which I sought to examine was how the Soviet/Afghan war of the 1980s
21 had resulted in the creation of the Taliban and also other mujahideen
22 organizations such as the Arab-Afghan groups which fought in
23 Afghanistan from approximately 1986 onwards.

1 In order to understand that, I arranged for this senior
2 member of the department of government at Georgetown University,
3 Professor Andrew Bennett, to conduct an independent research seminar
4 through which he would recommend readings for me, he would recommend
5 areas of study for me, and at the very end of the seminar I was
6 expected to write, then, a seminar thesis, and the seminar thesis was
7 titled "A Bitter Harvest," which actually I took the name from a book
8 written by Dr. Ayman al-Zawahiri. And the purpose of that again was
9 to examine how the events of the 1980s in Afghanistan served as a
10 crucible for the creation eventually of the Taliban of al Qaeda and
11 other Arab mujahideen organizations.

12 Q [MR. TRIVETT]: Now, we've heard some testimony on Dr. Ayman
13 al-Zawahiri in this case. Can you just remind the members very
14 briefly?

15 A [MR. KOHLMANN]: Sure. Dr. Ayman al-Zawahiri is the Deputy
16 Emir or Deputy Commander of al Qaeda. He's also a senior leader of
17 an organization known as the Egyptian Islamic Jihad Movement.

18 Q [MR. TRIVETT]: Now, while at Georgetown you write--you did a
19 thesis on something that you called, The Arab-Afghan Movement.

20 A [MR. KOHLMANN]: Yes, that would be my honors thesis.

21 **[END OF PAGE]**

1 Q [MR. TRIVETT]: Now, before you explain exactly what the crux
2 of that thesis was, can you explain what you mean by the term
3 Arab-Afghan?

4 A [MR. KOHLMANN]: Yes. Again, by Arab-Afghans I'm referring to
5 Arab fighters or foreign fighters who came to Pakistan and
6 Afghanistan during late 1980s, early 1990s, and beyond with the hopes
7 of, again, forming jihadi organizations to participate in the
8 conflict in Afghanistan, to seek training there, to seek combat
9 experience, and then to apply that combat experience and apply the
10 training they had received to their primary goal, which was, number
11 one, decapitating apostate regimes or heretical regimes in the Middle
12 East, and ultimately also attacking anyone who aligned with them,
13 supported them, or provided them means to continue serving as the
14 governments in those regions.

15 Q [MR. TRIVETT]: So on that thesis on Arab-Afghans, did that
16 paper touch on al Qaeda?

17 A [MR. KOHLMANN]: Yes. The--the beginning of the thesis
18 explained the genesis of al Qaeda on the Arab-Afghan movement from
19 the beginning of the 1980s, and then essentially took from
20 approximately 1991 on for four separate regions where Arab-Afghan
21 fighters had gone to, where they traveled to after fighting in
22 Afghanistan, examining those conflicts, those separate conflicts and
23 the separate organizations they had created in other areas of the

1 world, trying to understand true comparative analysis why these
2 Arab-Afghan organizations and why al Qaeda had been more successful
3 in certain regions of the world in certain countries than in others.

4 Q [MR. TRIVETT]: I'll just ask you once again, try to slow
5 down. What is that sir, I understand--we ran yellow for most of
6 testimony, so----

7 A [MR. KOHLMANN]: I apologize.

8 Q [MR. TRIVETT]: Now, while at Georgetown were you instructed
9 on how to properly research these topics?

10 A [MR. KOHLMANN]: Yes.

11 Q [MR. TRIVETT]: Were you instructed on something called
12 qualitative research?

13 A [MR. KOHLMANN]: Yes. In order to write an honors thesis at
14 Georgetown, you had an application process. A certain number of
15 students are selected. If you are selected to write an honors
16 thesis, then you are automatically enrolled in what is a year-long
17 process.

18 The first half of the year is an intensive course taught by
19 a senior member of the department faculty, in this case the late
20 Dr. Joseph Lutgold, who specifically are there not to bother with the
21 substantive details in what you're studying but specifically to teach
22 you the proper research methodology, how to do proper comparative
23 analysis, how to understand proper sourcing, what are good sources,

1 what are not good sources, and ultimately, then, how to combine all
2 of this and how to collate all of this into your eventual thesis.

3 Q [MR. TRIVETT]: And can you please explain the difference
4 between a primary and secondary source for your research.

5 A [MR. KOHLMANN]: Yes. A primary source would be going out and
6 doing an original interview one-on-one with a leader of an
7 organization, with a representative of an organization, where you're
8 going out and personally eye-witnessing events in the field; whereas
9 a secondary source would be watching an original video recording.
10 In this case, in my research from the terrorist organization or an
11 Arab-Afghan movement, getting access to a magazine or a communiqué
12 issued by an Arab-Afghan movement, by a terrorist organization.

13 These are obviously directly from--they're authentic
14 documents, but you're not there to actually hear the person say these
15 words, you're not here to see their lips move.

16 Q [MR. TRIVETT]: Now, what primarily are the types of sources
17 that you rely upon in formulating your expert opinions on al Qaeda?

18 A [MR. KOHLMANN]: Actually both prime--primary and secondary
19 sources.

20 [END OF PAGE]

1 Q [MR. TRIVETT]: Now, you mentioned you had a juris doctorate
2 degree from the University of Pennsylvania law school. While in law
3 school, did you take any classes that focused specifically on
4 terrorism?

5 A [MR. KOHLMANN]: Yes, I did.

6 Q [MR. TRIVETT]: And can you please explain what classes those
7 were?

8 A [MR. KOHLMANN]: Yes. Inside the law school itself, I took
9 class work on terrorism and democracy, on cyber terrorism, and other
10 aspects of the legal approaches to terrorism. Outside the law
11 school, in the graduate school of arts and science, I also did course
12 work in Afghanistan and Islamism taught by Dr. Bryan Spoon.

13 Q [MR. TRIVETT]: And so those were additional graduate-level
14 courses that were outside of the law school curriculum?

15 A [MR. KOHLMANN]: Yeah. Again, Afghanistan and Islamism was a
16 graduate--graduate course taught in the school of arts--graduate
17 school of arts and sciences at the University of Pennsylvania.

18 Q [MR. TRIVETT]: I want to turn your attention now to an
19 organization known as the Investigative Project. Are you aware of
20 this organization?

21 A [MR. KOHLMANN]: Yes.

22 Q [MR. TRIVETT]: And did you work for that organization?

23 A [MR. KOHLMANN]: Yes.

1 Q [MR. TRIVETT]: And can you please explain to the members what
2 that organization did?

3 A [MR. KOHLMANN]: The Investigative Project is a
4 counterterrorism think tank and research organization which was
5 started in approximately 1995 by a former CNN journalist. The focus
6 of this organization was to conduct nonprofit counterterrorism
7 research. In other words, attempting to collate and organize as much
8 research as possible about the various organizations which we were
9 focused on, the individuals behind them, their financing, their
10 recruitment, their methodology; the kind of details that are not
11 ordinarily covered by most research organizations but only those with
12 a very, very narrow interest on a particular set of organizations and
13 individuals. So it was a fairly esoteric level of research.

14 Q [MR. TRIVETT]: How long did you work there?

15 A [MR. KOHLMANN]: I worked there from approximately 19--excuse
16 me, February of 1998 until January of 2004.

17 Q [MR. TRIVETT]: Did your work at the Investigative Project
18 focus on any particular terrorist organization?

19 A [MR. KOHLMANN]: Yes. I did work on a number of groups, but
20 the large focus was on the Arab-Afghan movement and then al Qaeda.

21 [END OF PAGE]

1 Q [MR. TRIVETT]: Do you specialize in any particular type of
2 materials that you gathered on these terrorist groups?

3 A [MR. KOHLMANN]: Yes. In addition to obtaining original
4 interviews with the leaders of terrorist organizations, one of the
5 more lucrative areas of research that I found was through electronic
6 databases, such as websites maintained by militant organizations, by
7 terrorist organizations, electronic databases such as Lexis-Nexis,
8 such as FBIS, Foreign Broadcast Information Service, and other
9 databases which, again, contain secondary sources which I believe to
10 be relevant and valuable in order to understand these organizations
11 and in order to be able to do proper analysis on these organizations.

12 Q [MR. TRIVETT]: Now, let me ask you specifically. Are any of
13 the videotapes that you just mentioned from al Qaeda?

14 A [MR. KOHLMANN]: Yes.

15 Q [MR. TRIVETT]: And do you continue to work with the
16 Investigative Project?

17 A [MR. KOHLMANN]: Right now?

18 Q [MR. TRIVETT]: Correct.

19 A [MR. KOHLMANN]: No, I don't.

20 [END OF PAGE]

1 Q [MR. TRIVETT]: So in your work as an international terrorist
2 consultant--consultant, do you now maintain your own library of
3 documents?

4 A [MR. KOHLMANN]: Yes. Starting, again, in approximately
5 February of 1998, in concert with my studies at Georgetown, I began
6 maintaining my own database of original documents and original
7 information which I was collecting largely in order to help my
8 studies, in order to help me write my thesis.

9 These documents eventually mushroomed into a massive
10 database of literally hundreds of thousands of original documents,
11 communiqués, video recordings, audio recordings; as much relevant and
12 hopefully original information about these organizations, about the
13 people behind them, about their financing, about their methodology,
14 virtually every aspect that I could gather information about these
15 groups. I would collect this and then sort it into very, very
16 carefully organized--I actually call them file folders.

17 And everything is sorted by date, by subject, by group. So
18 it becomes relatively easy to then, if you have a particular document
19 or a particular subject you're looking for, to then reach back and
20 grab those relevant documents.

21 **[END OF PAGE]**

1 Q [MR. TRIVETT]: All right. And as an international terrorism
2 consultant, do you often work for United States Government agencies?

3 A [MR. KOHLMANN]: Both U.S. Government agencies and also
4 foreign governments.

5 Q [MR. TRIVETT]: And can you name just a few of the government
6 agencies that you've worked for in regard to the United States?

7 A [MR. KOHLMANN]: In the United States? The United States
8 Department of Justice, the United States Department of Defense,
9 United States State Department, the Department of Homeland Security
10 and various others.

11 Q [MR. TRIVETT]: And in regard to other countries that you
12 consulted, what agencies in those other countries have you consulted
13 for?

14 A [MR. KOHLMANN]: The United Kingdom Crown Prosecution Service,
15 the SO-15 Counterterrorism Command of New Scotland Yard. The state--
16 excuse me. The State Security Prosecutor for Serious Economic Crimes
17 in Denmark, the International Court of Justice at the Hague, the
18 Supreme Court of Bosnia-Herzegovina, in Sarajevo, the Australian
19 Federal Police and Prosecutor's Office in Australia, and various
20 other countries.

21 Q [MR. TRIVETT]: Have you also worked for an organization
22 called NEFA?

23 A [MR. KOHLMANN]: Yes.

1 Q [MR. TRIVETT]: And can you please tell the members what NEFA
2 is?

3 A [MR. KOHLMANN]: Yes. NEFA stands for Nine Eleven Finding
4 Answers. It's a foundation that's based in the United States. I am
5 currently employed by the NEFA foundation in a similar context to
6 which I was once employed by the Investigative Project; again, to
7 conduct nonprofit counterterrorism research and analysis.

8 Q [MR. TRIVETT]: Do you also own your own business?

9 A [MR. KOHLMANN]: Yes, I do.

10 Q [MR. TRIVETT]: What's the name of that business?

11 A [MR. KOHLMANN]: My business operates under the name
12 Globalterroralert.com.

13 Q [MR. TRIVETT]: Is that primarily a website?

14 A [MR. KOHLMANN]: Well, it's a website, but the website, again,
15 serves as a--basically as a front for my consulting business and it
16 allows me to be able to publish excerpts of relevant documents,
17 relevant original documents, which I believe to be necessary for
18 counterterrorism researchers to have access to in order to further
19 not just my own research but the research of various of my colleagues
20 and others who are involved in the study of international terrorist
21 organizations.

22

23

1 Q [MR. TRIVETT]: And this is a website focused primarily on
2 original sources from terrorist organizations, such as al Qaeda?

3 A [MR. KOHLMANN]: Yes. Again, I--I'm trying as much as
4 possible to offer at no charge to other researchers like myself who
5 are involved in this--in this field access to at least excerpts of
6 original documents, the original video recordings, original
7 communiqués, original--any original documents I can find, including
8 interviews which I, myself, conducted, and allow that information,
9 then, to be accessible, again, not just to myself but with anyone
10 else that has an interest in counterterrorism research.

11 Q [MR. TRIVETT]: Now, during the course of your career have you
12 written any books on terrorism-related subjects?

13 A [MR. KOHLMANN]: Yes.

14 TC [MR. TRIVETT]: I'm going to show the Military Judge what is
15 going to be a demonstrative aid and ask that it be shown to both the
16 witness and the members.

17 MJ [CAPT ALLRED]: Okay. Can you show this to the witness and
18 to the members?

19 Q [MR. TRIVETT]: Mr. Kohlmann, do you recognize what is
20 currently on your screen?

21 A [MR. KOHLMANN]: Yes.

22 Q [MR. TRIVETT]: And what do you recognize?

23 A [MR. KOHLMANN]: This is the cover of my book.

1 Q [MR. TRIVETT]: And can you please explain what this book
2 focused on primarily?

3 A [MR. KOHLMANN]: Yes. This book tended to follow in sequence
4 after my honors thesis by taking one country which I did not have the
5 opportunity to examine in my honors thesis at Georgetown, Bosnia-
6 Herzegovina, explaining the emergence of the Arab-Afghan movement in
7 Afghanistan during the late 1980s, and then tracing the trajectories
8 of foreign fighters who were trained in Pakistan and Afghanistan as
9 they then traveled on to the Balkans and Bosnia-Herzegovina during
10 the 1990s with the goal of using the conflict in Bosnia-Herzegovina
11 as a base for expansion into Europe and elsewhere.

12 Q [MR. TRIVETT]: And who was your intended audience when you
13 wrote this book?

14 A [MR. KOHLMANN]: It's a fairly detailed book. It's really
15 more for an academic audience. It's not really a general interest
16 book.

17 Q [MR. TRIVETT]: Was that book subject to any peer review prior
18 to it being published?

19 A [MR. KOHLMANN]: Yes. In order to publish the book, the book
20 was subject to an independent peer review process conducted by the
21 publisher, and obviously before I even submitted the book to the
22 publisher it was very, very carefully reviewed by a wide--wide
23 variety of my colleagues.

1 TC [MR. TRIVETT]: I would ask that the book be taken down at
2 this time.

3 Q [MR. TRIVETT]: Now, have you ever provided testimony before
4 the U.S. Congress?

5 A [MR. KOHLMANN]: I have co-authored testimony, yes.

6 Q [MR. TRIVETT]: And do you recall what committee of the U.S.
7 Congress?

8 A [MR. KOHLMANN]: I believe it was the House Financial Services
9 Committee.

10 Q [MR. TRIVETT]: Now, was that written or live testimony, live?

11 A [MR. KOHLMANN]: Well, it was written. My colleague delivered
12 it live, but it was co-authored by myself.

13 Q [MR. TRIVETT]: And what was the nature of that testimony?

14 A [MR. KOHLMANN]: The nature of that testimony focused on how
15 Islamic charitable organizations in the Arabian Gulf had served as a
16 vehicle to provide financing to Arab-Afghan organizations and other
17 terrorist organizations, but most specifically to al Qaeda and Usama
18 bin Laden.

19 Q [MR. TRIVETT]: Other than the books you've written, have you
20 ever authored any articles regarding terrorism on that subject?

21 A [MR. KOHLMANN]: Yes.

22

23

1 Q [MR. TRIVETT]: Without listing all of them, have you ever
2 published any terrorism-related articles in a publication on foreign
3 affairs?

4 A [MR. KOHLMANN]: Yes.

5 Q [MR. TRIVETT]: And do you know the nature of--do you recall
6 what the nature of that article was?

7 A [MR. KOHLMANN]: Yes. That article examined the phenomenon of
8 online terrorism, how the Internet was being used by traditional
9 terrorist organizations, such as al Qaeda, in order to expand their
10 propaganda, in order to expand their recruitment, in order to change
11 the very underlying nature of the organization. And the
12 difficulties--the underlying difficulties in which investigators have
13 in studying this new phenomenon.

14 Q [MR. TRIVETT]: Are you ever asked to actually speak at any
15 academic conferences?

16 A [MR. KOHLMANN]: Quite frequently, yes.

17 Q [MR. TRIVETT]: Now, are you familiar with something called
18 the Counterterrorism Blog?

19 A [MR. KOHLMANN]: Yes.

20 Q [MR. TRIVETT]: Do you publish within the Counterterrorism
21 Blog?

22 A [MR. KOHLMANN]: I'm a founding contributor of the
23 Counterterrorism Blog.

1 Q [MR. TRIVETT]: And if you could just briefly describe what
2 the Counterterrorism Blog is.

3 A [MR. KOHLMANN]: Certainly. The Counterterrorism Blog is an
4 online Web log which focuses on counterterrorism issues. There's
5 approximately 15 contributors at the moment. And the idea is--is
6 that we each post various bits of our research, various different
7 opinions, editorials and other pieces of research. And the blog
8 actually serves as a vehicle for different contributors to debate
9 various issues, hash out various issues, so that, again, the larger
10 counterterrorism community, those involved in counterterrorism
11 research, we all have an opportunity to do research, to judge it and
12 be able to, again, hash out these issues in a collective manner.

13 Q [MR. TRIVETT]: So is there any type of peer review also for
14 everything that you add on that blog?

15 A [MR. KOHLMANN]: Yeah, virtually every single paper that I
16 publish is actually eventually then published on the Counterterrorism
17 Blog and, of course, the website, the Nine-Eleven Finding Answers
18 foundation, which allows others to carefully review almost everything
19 that I--that I write or publish.

20 Q [MR. TRIVETT]: Have you been retained by the U.S. Government
21 as an expert witness on terrorist issues prior to this case?

22 A [MR. KOHLMANN]: Yes.

1 Q [MR. TRIVETT]: Do you recall how many times?

2 A [MR. KOHLMANN]: I believe ten times.

3 Q [MR. TRIVETT]: Have you ever testified outside the United
4 States as an expert in terrorism issues?

5 A [MR. KOHLMANN]: Yes.

6 Q [MR. TRIVETT]: Any of those terrorism issues also include al
7 Qaeda?

8 A [MR. KOHLMANN]: Yes.

9 Q [MR. TRIVETT]: Do you recall how many times?

10 A [MR. KOHLMANN]: In total?

11 Q [MR. TRIVETT]: How many times outside.

12 A [MR. KOHLMANN]: Five times outside the United States.

13 Q [MR. TRIVETT]: Now, typically when you're retained by the
14 U.S. Government, are you paid for your services?

15 A [MR. KOHLMANN]: Yes.

16 Q [MR. TRIVETT]: Have you ever been retained by a defense
17 counsel as an expert in other cases?

18 A [MR. KOHLMANN]: No.

19 Q [MR. TRIVETT]: Were you ever asked?

20 A [MR. KOHLMANN]: I was asked once; however, in that case it
21 was a--it was a war crimes case in the Balkans and the defendant in
22 that case was someone who was accused of committing war crimes

1 against innocent Muslims, and I did not want my research to be
2 twisted to justify the genocide of Muslims.

3 Q [MR. TRIVETT]: Other than as an expert witness, in what other
4 capacities have you been retained by the U.S. Government for your
5 terrorism consult?

6 A [MR. KOHLMANN]: I have also been hired in order to review--
7 review seized evidence. I have been--I have been hired in order to
8 interview cooperating defendants in terrorism cases on behalf of the
9 Federal Bureau of Investigation. I've been hired to give
10 presentations to government and nongovernmental personnel in a
11 variety of capacities.

12 Q [MR. TRIVETT]: Have you, yourself, ever interviewed a
13 terrorist or someone who was alleged to have been a terrorist?

14 A [MR. KOHLMANN]: Yes.

15 Q [MR. TRIVETT]: Without going into every one of them, can you
16 just describe one of the terrorists that you have met with?

17 A [MR. KOHLMANN]: Yes. I have interviewed Sheikh Abu Hamza
18 al-Masri, the former head of the Finsbury Park mosque in London.
19 Sheikh Abu Hamza is--has been convicted of violations of the U.K.'s
20 Antiterrorism Act, is currently in prison there. He's also awaiting
21 extradition to the United States to face federal charges in I believe
22 the Eastern District of--no, excuse me, the Southern District of New
23 York.

1 Q [MR. TRIVETT]: Have you been qualified as an expert in
2 terrorism in the Eastern District of Virginia?

3 A [MR. KOHLMANN]: Yes, I have.

4 Q [MR. TRIVETT]: The Southern District of New York?

5 A [MR. KOHLMANN]: Yes, I have.

6 Q [MR. TRIVETT]: The District of Massachusetts?

7 A [MR. KOHLMANN]: Yes, I have.

8 Q [MR. TRIVETT]: The Northern District of New York?

9 A [MR. KOHLMANN]: Yes, I have.

10 Q [MR. TRIVETT]: During any of those cases were you qualified
11 as an expert in doing Internet research in tracking terrorists?

12 A [MR. KOHLMANN]: Yes.

13 Q [MR. TRIVETT]: Are you qualified as an expert on the origin
14 of the Arab-Afghan register?

15 A [MR. KOHLMANN]: Yes.

16 Q [MR. TRIVETT]: And you previously described what an Arab-
17 Afghan well is for?

18 A [MR. KOHLMANN]: Yeah. This is--again, it's a vernacular term
19 used in the West. The more common term used among--in the Muslim
20 world is mujahideen, Arab mujahideen, foreign mujahideen.

21 Q [MR. TRIVETT]: You've also been qualified as an expert
22 specifically on the al Qaeda organization?

23 A [MR. KOHLMANN]: Yes.

1 Q [MR. TRIVETT]: Specifically, were you qualified as an expert
2 in the history of al Qaeda?

3 A [MR. KOHLMANN]: Yes.

4 Q [MR. TRIVETT]: Organizational structure of al Qaeda?

5 A [MR. KOHLMANN]: Yes.

6 Q [MR. TRIVETT]: The leadership of al Qaeda?

7 A [MR. KOHLMANN]: Yes.

8 Q [MR. TRIVETT]: The tradecraft of al Qaeda?

9 A [MR. KOHLMANN]: Yes.

10 Q [MR. TRIVETT]: Were you ever qualified as an expert in the
11 relationship between jihad fighters in Bosnia, Pakistan, and
12 Afghanistan?

13 A [MR. KOHLMANN]: Yes.

14 Q [MR. TRIVETT]: And were you also qualified as an expert in
15 the relationship between the Taliban and al Qaeda?

16 A [MR. KOHLMANN]: Yes.

17 TC [MR. TRIVETT]: Sir, at this time the prosecution would
18 tender Mr. Kohlmann as an expert in the Arab-Afghan movement,
19 terrorist groups and their use of the Internet, and the history,
20 organization, leadership, propaganda and tradecraft of al Qaeda.

21 CDC [MR. SWIFT]: Just a few questions, Your Honor.

22 MJ [CAPT ALLRED]: Okay. We'll allow the defense to voir dire
23 the witness.

1 VOIR DIRE EXAMINATION

2 Questions by the civilian defense counsel:

3 Q [MR. SWIFT]: I want to make sure that we have a couple things
4 correct. Your study of the Arab-Afghan, since you've used that term,
5 began in Georgetown in your undergraduate program; is that correct?

6 A [MR. KOHLMANN]: It began approximately--yeah, about February,
7 January, February 1998, that's correct.

8 Q [MR. SWIFT]: And you were pursuing an undergraduate degree at
9 Georgetown at the time?

10 A [MR. KOHLMANN]: At the time, yes.

11 Q [MR. SWIFT]: And you wrote two papers while at Georgetown
12 concerning the Arab-Afghans?

13 A [MR. KOHLMANN]: Well, I--I wrote multiple papers, but I was
14 discussing the major papers at----

15 Q [MR. SWIFT]: What were the major papers during that period of
16 time?

17 A [MR. KOHLMANN]: Two papers which I would consider lengthy
18 academic style papers beyond just general course. I took--I took an
19 extensive amount of course work at Georgetown relating to the
20 Arab-Afghans. I also did course--when I was--I served as an
21 undergraduate research assistant for Dr. Mumoon Farmdi in the Center
22 for Contemporary Arts studies.

1 While I was doing course work for him and while I was
2 serving as his research assistant, I also wrote numerous papers about
3 the Arab-Afghans movements in the Arabian Gulf, the Arab-Afghan
4 movements in North Africa. These are just the ones that I would
5 classify as the main--my major accomplishments at Georgetown.

6 Q [MR. SWIFT]: And these were all in the undergraduate program?

7 A [MR. KOHLMANN]: That's--that's correct, yes.

8 Q [MR. SWIFT]: Did you ever obtain a master's in history?

9 A [MR. KOHLMANN]: No. My graduate degree is a juris doctorate.

10 Q [MR. SWIFT]: Now, you mentioned that you did take a master's
11 level or post-graduate level courses at the University of
12 Pennsylvania; is that correct?

13 A [MR. KOHLMANN]: That's correct, yes.

14 Q [MR. SWIFT]: Did you obtain a certificate or any degree
15 related to those courses?

16 A [MR. KOHLMANN]: No. My course work in the school of arts and
17 sciences, the graduate school of arts and sciences, actually counted
18 towards my juris doctorate.

19 Q [MR. SWIFT]: Did you--in your research of the Afghan-Arabs,
20 have you ever traveled to Afghanistan?

21 A [MR. KOHLMANN]: Not Afghanistan, no.

22 Q [MR. SWIFT]: Have you traveled to Pakistan?

23 A [MR. KOHLMANN]: Not Pakistan, no.

1 Q [MR. SWIFT]: Okay. Have you ever interviewed any of the
2 leaders of the Northern Alliance--and perhaps we should stop and
3 define that term. I don't want that----

4 A [MR. KOHLMANN]: I----

5 Q [MR. SWIFT]: Do you know what the Northern Alliance is?

6 A [MR. KOHLMANN]: I interviewed individuals who fought as part
7 of Ahmed Shah Massoud, his contingent in the Panjshir Valley. I
8 don't know if you--they were foreign fighters, so I don't know if you
9 classify them as being part of the Northern Alliance, but again, I
10 have interviewed personal associates of Ahmed Shah Massoud.

11 Q [MR. SWIFT]: When did they fight with him?

12 A [MR. KOHLMANN]: In the late 1980s.

13 Q [MR. SWIFT]: So they would not have been fighting with him
14 during the period of time of the conflict within the Taliban and the
15 Northern Alliance?

16 A [MR. KOHLMANN]: No.

17 Q [MR. SWIFT]: With regards to your expertise, then, on
18 Afghanistan and the war occurring there in the 1990s, you would be
19 relying exclusively on secondary sources; is that true?

20 A [MR. KOHLMANN]: No.

21 Q [MR. SWIFT]: What sources are you relying?

22 A [MR. KOHLMANN]: Primary interviews with individuals who were
23 fighting in Afghanistan and were in prison in Pakistan from, again,

1 approximately 1988 to----

2 Q [MR. SWIFT]: These individuals were----

3 A [MR. KOHLMANN]: -----Sheikh Abu Hamza al-Masri, Abu adal
4 Hamas, otherwise known as Buwana Bujama. I could----

5 Q [MR. SWIFT]: So these were guys--these would be individuals
6 who were fighting on behalf of the Taliban; is that correct?

7 A [MR. KOHLMANN]: No, these would be individuals who were
8 present there as part of the Arab-Mujahideen movement.

9 Q [MR. SWIFT]: In the 1990s, I guess. My question--as part of
10 the part of the Arab-Mujahideen movement in the 1990s in Afghanistan;
11 correct?

12 A [MR. KOHLMANN]: In Pakistan and Afghanistan, that's correct,
13 yes.

14 Q [MR. SWIFT]: Were you they aligned--were they unaligned
15 forces? In other words, they were neither aligned with the Taliban
16 nor aligned with the Northern Alliance?

17 A [MR. KOHLMANN]: They were aligned with al Qaeda.

18 Q [MR. SWIFT]: Were they--was al Qaeda aligned with the Taliban
19 or with the Northern Alliance?

20 CTC [MR. TRIVETT]: Objection, sir. I think this is past the
21 point of voir dire and it would be more appropriate for cross-
22 examination.

23

1 MJ [CAPT ALLRED]: I think that's a fair objection. Do you
2 have--do you have a challenge to his credentials as an expert
3 witness?

4 CTC [MR. SWIFT]: I just wanted to explore whether he--the
5 statement that he interviewed primary sources with regards to this.
6 I'm not sure I got the answer on it, but I'll--I'll save the rest for
7 cross-examination, Your Honor.

8 MJ [CAPT ALLRED]: The answer was "yes." You may not--may not
9 have liked his answer he gave you, but I think the answer was "yes."

10 CDC [MR. SWIFT]: I don't have any further questions, Your
11 Honor.

12 MJ [CAPT ALLRED]: Is there an objection, then, to
13 Mr. Kohlmann's designation as an expert?

14 CDC [MR. SWIFT]: Well, I have one objection to the relevance of
15 the Internet in this case, his expertise there, what he's been
16 proffered. I'm not sure that the Internet plays any bearing in
17 Hamdan's case, and I--while I hear a proffer why his expertise on how
18 they use the Internet has a bearing on Mr. Hamdan, who has a fourth
19 grade education, and I don't think it's at the [inaudible].

20 MJ [CAPT ALLRED]: Well, we--I'm sure the government will lay
21 that out for us. What are the three areas in which you proffered
22 Mr. Kohlmann as an expert, again?

23

1 CTC [MR. TRIVETT]: Sir, specifically, the prosecution has
2 tendered Mr. Kohlmann as an expert in the Arab-Afghan movement,
3 terrorist groups and their use of the Internet; and the history,
4 organization, leadership, propaganda and tradecraft of the al Qaeda
5 terrorist organization.

6 MJ [CAPT ALLRED]: Okay. I'll recognize him as an expert in
7 those areas, and we'll see if it turns out to be relevant or not in
8 Mr. Hamdan's case. Carry on.

9 CTC [MR. TRIVETT]: And could the court--the witness has--going
10 to address the issue of al Qaeda as an international terrorist
11 organization engaged in hostilities against the United States.

12 MJ [CAPT ALLRED]: Very good.

13 **Questions by the civilian trial counsel:**

14 Q [MR. TRIVETT]: Mr. Kohlmann, are you familiar with the term
15 "propaganda," and how would you define it?

16 A [MR. KOHLMANN]: Propaganda is material which is designed to--
17 on behalf of a political organization, which is designed to either
18 recruit individuals to join that political organization and also to
19 frighten or scare those opponents of that political organization.

20 Q [MR. TRIVETT]: How important is propaganda, in your expert
21 opinion, to a terrorist group?

22 A [MR. KOHLMANN]: It's absolutely essential.

1 Q [MR. TRIVETT]: And why is that?

2 A [MR. KOHLMANN]: Well, because terrorist organizations are
3 minority organizations. They are usually small groups of people.
4 The only way in which they can reach out to a group, other small
5 minorities and extremists around the world, is to--by disseminating
6 their propaganda and luring these people in.

7 It's also essential for terrorist organizations to frighten
8 their enemies. Thus, terror in the word terrorist. And, thus, the
9 only way to communicate their goals and communicate their willingness
10 to act in acts of violence is through propaganda.

11 Q [MR. TRIVETT]: How important is propaganda to the al Qaeda
12 terrorist organization specifically?

13 A [MR. KOHLMANN]: It's absolutely essential.

14 Q [MR. TRIVETT]: For those same reasons?

15 A [MR. KOHLMANN]: Yes.

16 Q [MR. TRIVETT]: And are you aware of whether or not al Qaeda
17 has a media committee?

18 A [MR. KOHLMANN]: Yes.

19 Q [MR. TRIVETT]: And generally what types of propaganda did al
20 Qaeda utilize in this media committee?

21 A [MR. KOHLMANN]: A fairly wide range of propaganda.
22 Everything from written communiqués to audio recordings, video
23 recordings. Again, a fairly diverse range of propaganda.

1 Q [MR. TRIVETT]: And how did al Qaeda go about spreading their
2 propaganda?

3 A [MR. KOHLMANN]: Well, initially it was fairly difficult for
4 al Qaeda to spread its propaganda. Al Qaeda doesn't own a television
5 station, it doesn't own a radio station. In order to communicate its
6 goals, it had to work with traditional media organizations: news
7 stations, newspapers, traditional journalists. However, al Qaeda
8 soon found that there were major weaknesses to using traditional
9 media. Among other things, that traditional media were only
10 broadcasting editorialized versions of what al Qaeda handed them.
11 Thus, this wasn't the original propaganda that al Qaeda wanted to
12 broadcast to the world.

13 Subsequently, al Qaeda moved into other means of
14 distributing its propaganda, such as by using middlemen and book
15 stores in various parts of the world run by individuals who were
16 sympathetic to al Qaeda, its goals and its methodology.

17 Eventually, though, that also became a liability because
18 those middlemen, those book stores, became targets for legal cases or
19 criminal legal cases in multiple different countries. Those
20 individuals were prosecuted.

21 Subsequent to that, al Qaeda then moved its majority to--al
22 Qaeda then moved its majority of propaganda onto the Internet, which
23 was a frontier in which you could disseminate, again, the raw

1 propaganda without it being editorialized, without putting
2 individuals at extreme risk for having distributed this in Western
3 countries. Again, it was a gradual process.

4 Q [MR. TRIVETT]: Sir, the red light is on.

5 A [MR. KOHLMANN]: Excuse me, Your Honor.

6 MJ [CAPT ALLRED]: That's--that's to be a constant reminder that
7 the interpreters are working as hard as they can.

8 WIT [MR. KOHLMANN]: Your Honor, I'll--I'll make it right for
9 them.

10 MJ [CAPT ALLRED]: And you have a great deal of information,
11 Mr. Kohlmann.

12 WIT [MR. KOHLMANN]: Thank you, Your Honor.

13 MJ [CAPT ALLRED]: Thank you.

14 Q [MR. TRIVETT]: Have you personally come into possession of
15 any of al Qaeda's propaganda?

16 A [MR. KOHLMANN]: Yes.

17 Q [MR. TRIVETT]: How recently did al Qaeda begin using the
18 Internet to spread its propaganda?

19 A [MR. KOHLMANN]: Again, it was a gradual process. It began in
20 approximately 1998, and it--it snowballed, very much so, especially
21 during the years of approximately 2002 and 2003. That's when the
22 explosion of al Qaeda propaganda on the Internet really came about.
23 However, al Qaeda websites and pro al Qaeda websites and websites run

1 by individuals who were directly endorsed by al Qaeda and by other
2 Arab-Afghan leaders have been in operation as early as 1996, 1997.

3 Q [MR. TRIVETT]: And just so we're clear, when al Qaeda was
4 releasing their propaganda in 2002 and 2003, were they ever
5 discussing issues or attacks that had occurred prior to that, in
6 their propaganda?

7 A [MR. KOHLMANN]: Yes, very frequently, because since al Qaeda
8 had such a difficulty in the early days in communicating its message
9 out to the world, it then apparently felt the need to then go back
10 and cover events that had not been thoroughly fleshed out in earlier
11 years and give a more advanced perspective or advanced retelling of
12 those events through the eyes of al Qaeda.

13 Q [MR. TRIVETT]: Now, would you get some of these from
14 websites----

15 A [MR. KOHLMANN]: Yes.

16 Q [MR. TRIVETT]: ----some of these movies? Can you just
17 generally explain what types of websites would have this kind of
18 material and how you were able to access them.

19 A [MR. KOHLMANN]: Yes. Some of these websites were open, such
20 as Azzam Publications, which was a public website which was directly
21 endorsed by Arab-Afghan leaders who--on video recordings, who had
22 fought in Afghanistan and elsewhere.

1 This organization disseminated video recordings, it
2 disseminated fatwas, it disseminated written communiqués and a
3 variety of other information.

4 Later on, as these types of websites became more and more
5 of the focus of intelligence agencies----

6 Q [MR. TRIVETT]: I'm going to ask you to slow down for a
7 second.

8 A [MR. KOHLMANN]: Excuse me. I'm sorry.

9 Q [MR. TRIVETT]: Okay. I'll give you "clear" when the green
10 light is on. Please continue.

11 A [MR. KOHLMANN]: More and more as these organizations became
12 the subject of--of interest by intelligence organizations and by
13 other government organizations in Western countries and most of the
14 Middle Eastern countries, there became a new focus, which was moving
15 on to what are known as Internet message forums, which are message
16 forums in which you have to have a log-in and a password in order to
17 access.

18 So by this means, those who were disseminating al Qaeda's
19 propaganda directly on behalf of al Qaeda were more carefully able to
20 control those who had direct access to the recordings, to the
21 communiqués, as they were immediately released by al Qaeda.

22 In order to gain access to these forums, I created user
23 names and passwords on the forums which were directly endorsed by al

1 Qaeda and by other Afghan--Arab-Afghan organizations in their own
2 words.

3 Q [MR. TRIVETT]: In what language were many of these videotapes
4 released?

5 A [MR. KOHLMANN]: In a variety of languages. Obviously Arabic
6 is one language. The videos were also released in Urdu, which is the
7 language of Pakistan; Pashto, which is in southern Afghanistan. You
8 also had videos that were released in English, in German, in Spanish,
9 in French; a fairly wide variety of languages.

10 Q [MR. TRIVETT]: Did you become familiar in your search and
11 taking possession of these propaganda films from al Qaeda with the
12 term as-sahab?

13 A [MR. KOHLMANN]: Yes.

14 Q [MR. TRIVETT]: Could you please spell that for the members.

15 A [MR. KOHLMANN]: Yes. As-Sahab is spelled A-S-S-A-H-A-B.

16 Q [MR. TRIVETT]: And what's your understanding of what it
17 means?

18 A [MR. KOHLMANN]: As-Sahab is an Arabic word which means "the
19 clouds."

20 Q [MR. TRIVETT]: Are you familiar with an organization called
21 the As-Sahab Media Foundation?

22 A [MR. KOHLMANN]: Yes.

23

1 Q [MR. TRIVETT]: What do you know that organization to be?

2 A [MR. KOHLMANN]: The As-Sahab Media Foundation is the official
3 organization responsible for creating al Qaeda propaganda material,
4 mainly audio recordings and video recordings of senior al Qaeda
5 leaders and al Qaeda activity inside the borders of Pakistan and
6 Afghanistan specifically.

7 Q [MR. TRIVETT]: And when did As-Sahab become the official
8 media foundation for al Qaeda?

9 A [MR. KOHLMANN]: Its initial coming out process was in, again,
10 approximately early--early 2001.

11 Q [MR. TRIVETT]: And do you recall what its first official
12 release was?

13 A [MR. KOHLMANN]: Yes. The very first video produced by the
14 As-Sahab Media Foundation actually has two different names, although
15 it's the same video. It's known alternatively as "State of the Uma"
16 and also known as "The Destruction of the American Destroyer USS
17 COLE."

18 Q [MR. TRIVETT]: And you referenced a word.

19 A [MR. KOHLMANN]: Uma.

20 Q [MR. TRIVETT]: Uma. Can you please explain to the members
21 what that word means?

22 A [MR. KOHLMANN]: Uma is an Arabic term which refers to the
23 larger Islamic nation.

1 Q [MR. TRIVETT]: Now, in your expert opinion, is As-Sahab Media
2 Foundation run in-house by al Qaeda or is it something that they
3 contract out?

4 A [MR. KOHLMANN]: No, it's run in-house by al Qaeda.

5 Q [MR. TRIVETT]: So in your opinion are all of the statements
6 made in these As-Sahab videos the direct statements of al Qaeda
7 itself?

8 A [MR. KOHLMANN]: Yes. It is the official statements, it is
9 the official fatwas, it is the official video recordings of al Qaeda
10 itself, al Qaeda senior leadership in Afghanistan and in Pakistan.

11 TC [MR. TRIVETT]: I'm now going to show another demonstrative
12 aid. I would ask--I would ask that it be shown to the Military
13 Judge, and, with his permission, to the witness and the members.

14 MJ [CAPT ALLRED]: You may, and to the public.

15 Q [MR. TRIVETT]: Mr. Kohlmann, do you recognize the image on
16 your screen?

17 A [MR. KOHLMANN]: Yes, I do.

18 Q [MR. TRIVETT]: And what do you recognize this image as?

19 A [MR. KOHLMANN]: This is the current official logo for the
20 As-Sahab Media Foundation. You notice in the bottom it actually says
21 in English As-Sahab.

22

23

1 Q [MR. TRIVETT]: Is this symbol present in some of the movies
2 that have been released by al Qaeda?

3 A [MR. KOHLMANN]: It's been present in many of them, yes.

4 Q [MR. TRIVETT]: Now, how about that first one that you were
5 just referencing, the USS COLE? Was this symbol in that movie?

6 A [MR. KOHLMANN]: No. In the first several movies which were
7 released by As-Sahab, they were still developing their--I guess you
8 would call it their media approach. At that time, their titling,
9 their English subtitling, their titling in the movie was slightly
10 different. It was the same organization; it just didn't have this
11 logo.

12 Q [MR. TRIVETT]: So how can we be sure that it's an As-Sahab
13 production?

14 A [MR. KOHLMANN]: Well, number one, these video recordings, the
15 initial video recordings, have been subsequently referenced in later
16 video recordings which do have this logo. But, more importantly,
17 they've also specifically identified these videos as being their
18 official productions in later videos released by As-Sahab.

19 Q [MR. TRIVETT]: So in your expert opinion, are all of the
20 As-Sahab movies, whether they have the symbol or whether they do not,
21 in your expert opinion, are they all authentic statements from al
22 Qaeda itself?

23 A [MR. KOHLMANN]: Yes, absolutely.

1 TC [MR. TRIVETT]: I would now ask that the Military Judge see
2 the next demonstrative aid and ask that it be published to the
3 witness and the members as well, as a demonstrative aid.

4 MJ [CAPT ALLRED]: Okay. You may show that. You can show it to
5 the gallery, to the members.

6 Q [MR. TRIVETT]: Mr. Kohlmann, are you aware of the description
7 on your screen?

8 A [MR. KOHLMANN]: The description?

9 Q [MR. TRIVETT]: Are you aware of what is on your screen?

10 A [MR. KOHLMANN]: Yes.

11 Q [MR. TRIVETT]: Can you please describe what it is that's on
12 it?

13 A [MR. KOHLMANN]: This is the opening title, title screen to a
14 video recording or a video presentation I was asked to produce by the
15 Office of Military Commissions, titled "The al Qaeda Plan."

16 Q [MR. TRIVETT]: And can you please describe what the "The al
17 Qaeda Plan" comprises.

18 A [MR. KOHLMANN]: "The al Qaeda Plan" is a noncommercial video
19 production which tells the story of the founding of al Qaeda and
20 brings an audience through the creation of al Qaeda, its methodology,
21 its structure, and its involvement in various terrorist acts directed
22 at the United States and its allies from approximately 1987 to 2001.

1 Q [MR. TRIVETT]: Now, whose perspective is "The al Qaeda Plan"
2 generally referencing?

3 A [MR. KOHLMANN]: Well, it's my perspective but it's told
4 through actually raw--primarily through raw recordings from al Qaeda,
5 raw As-Sahab recordings and other videos which I have obtained from
6 Arab-Afghan mujahideen organizations.

7 Q [MR. TRIVETT]: And who came up with the name of the movie?

8 A [MR. KOHLMANN]: The name was a collaborative effort by myself
9 and the Office of Military Commissions.

10 Q [MR. TRIVETT]: And do you know why that name was chosen?

11 A [MR. KOHLMANN]: Yes. The name was chosen because it
12 reflected a previous precedent in previous war crime trials.

13 Q [MR. TRIVETT]: Specifically, do you know what war crimes
14 trial?

15 A [MR. KOHLMANN]: I believe the Nuremberg trials.

16 Q [MR. TRIVETT]: And was there a movie entered in the Nuremberg
17 war--war crimes tribunal, as well?

18 A [MR. KOHLMANN]: Yes. It was known as the "The Nazi Plan."

19 Q [MR. TRIVETT]: And were you paid for putting this
20 presentation together?

21 A [MR. KOHLMANN]: Yes.

22 Q [MR. TRIVETT]: The U.S. Government paid you for it?

23 A [MR. KOHLMANN]: Yes.

1 Q [MR. TRIVETT]: Now, does that pay include your testimony
2 today?

3 A [MR. KOHLMANN]: No.

4 Q [MR. TRIVETT]: But you're paid--you're being paid for your
5 testimony today, as well?

6 A [MR. KOHLMANN]: Yes.

7 Q [MR. TRIVETT]: Can you please briefly explain to the members
8 how you went about putting the presentation together?

9 A [MR. KOHLMANN]: Yes. Initially, I created a draft script
10 which was based upon my understanding of the al Qaeda organization,
11 which was largely based upon the research I had done for my honors
12 thesis, for my book, and various other papers and research that I
13 have done.

14 It laid out specific facts as proven by original documents,
15 the testimony of al Qaeda operatives, by exhibits submitted in
16 Federal Court in criminal cases involving al Qaeda defendants.

17 That script was then laid out with all the footnotes, my
18 sources for all the facts. And then I took original al Qaeda videos
19 in an attempt to find sections of those videos which were appropriate
20 in the script, which appropriately reflected what I attempted to
21 communicate in the script----

22

23

1 Q [MR. TRIVETT]: Can I have you slow down for a second?

2 A [MR. KOHLMANN]: I then provided a copy of this script to the
3 Office of Military Commissions, indicating my intent. And then I
4 created, again, the full length video based upon that script, based
5 upon the selection of the videos which I had chosen.

6 Q [MR. TRIVETT]: Are all of the opinions expressed within "The
7 al Qaeda Plan" entirely your own?

8 A [MR. KOHLMANN]: Yes, they're all mine.

9 Q [MR. TRIVETT]: In regard--and when I say that, I mean did the
10 Office of the Chief Prosecutor influence your opinion in any way?

11 A [MR. KOHLMANN]: No.

12 Q [MR. TRIVETT]: And how long is this presentation?

13 A [MR. KOHLMANN]: It's approximately 90 minutes in length.

14 Q [MR. TRIVETT]: Is it broken down into different topics?

15 A [MR. KOHLMANN]: Yes. It's broken down into seven--excuse me,
16 seven separate sections, each dealing with various different aspects
17 of al Qaeda and the formation of al Qaeda until the very end, the
18 attacks on the United States on September 11th, 2001.

19 TC [MR. TRIVETT]: I would ask that the next demonstrative
20 exhibit be made available to the Military Judge and, with his
21 permission, to the witness and the members.

22 MJ [CAPT ALLRED]: Please go ahead.

23

1 Q [MR. TRIVETT]: Mr. Kohlmann, do you recognize what's
2 currently on your screen?

3 A [MR. KOHLMANN]: Yes, I do.

4 Q [MR. TRIVETT]: What do you recognize that as?

5 A [MR. KOHLMANN]: This is the, as you call it, the table of
6 contents to "The al Qaeda Plan." These are the various different
7 sections, the seven sections which comprise "The al Qaeda Plan."

8 Q [MR. TRIVETT]: Now, I see that there's Part 1 through Part 7.
9 Is there also a prologue?

10 A [MR. KOHLMANN]: There's a prologue and there's also an
11 affidavit, as well.

12 Q [MR. TRIVETT]: Just briefly describe why you thought it was
13 important to include a prologue.

14 A [MR. KOHLMANN]: In this video recording there are numerous
15 Arabic--there's numerous Arabic words and terminology which was used.
16 There are numerous symbols, insignias which are visible on the
17 videos. It's not immediately obvious, I don't believe, anyway, to
18 ordinary observers what that terminology means, what those insignias
19 represent, what organizations they're from.

20 In order to clarify where the videos, the underlying videos
21 I had obtained, where they were from, in order to clarify the
22 terminology, in order to make this understandable to a general
23 audience, I felt it would be helpful to create an initial prologue.

1 Q [MR. TRIVETT]: I want to now turn your attention away from
2 "The al Qaeda Plan" specifically, in regard to what you put together
3 and back to As-Sahab for a second.

4 Did As-Sahab put together anything, any video presentations
5 of their own that you would consider feature length?

6 A [MR. KOHLMANN]: Yes.

7 Q [MR. TRIVETT]: And what was the first one that they did?

8 A [MR. KOHLMANN]: The very first feature length production
9 which they created would be, again, is "State of the Uma," otherwise
10 known as "The Destruction of the American Destroyer USS COLE."

11 Q [MR. TRIVETT]: And were there other feature length movies
12 that al Qaeda put out?

13 A [MR. KOHLMANN]: Yes. It's something that they specialize in.

14 Q [MR. TRIVETT]: Did you use any of those other movies in
15 putting together "The al Qaeda Plan"?

16 A [MR. KOHLMANN]: Numerous of them, yes.

17 TC [MR. TRIVETT]: I'm going to ask that the next demonstrative
18 aid be shown to the Military Judge and, with his permission, to the
19 witness and the members.

20 MJ [CAPT ALLRED]: Very well.

21 Q [MR. TRIVETT]: Mr. Kohlmann, do you recognize the image on
22 your screen?

23 A [MR. KOHLMANN]: Yes, I do.

1 Q [MR. TRIVETT]: And what do you recognize that as?

2 A [MR. KOHLMANN]: This is the title screen from the video which
3 I just described, "The State of the Uma." Otherwise known as "The
4 Destruction of the American Destroyer USS COLE." The title writing
5 was not put there by myself; it was put there by al Qaeda.

6 Q [MR. TRIVETT]: And is there an explosion depicted on this
7 movie?

8 A [MR. KOHLMANN]: Yes. It's a fairly cheesy special effects
9 display intending to represent the explosion that took place in
10 October of 2000, aimed at the USS COLE.

11 Q [MR. TRIVETT]: And just so that every one is clear, who did
12 that representation of the explosion?

13 A [MR. KOHLMANN]: It was al Qaeda. The As-Sahab Media
14 Foundation.

15 Q [MR. TRIVETT]: And can you describe just very generally,
16 because I know we're going to watch some of this later, what the main
17 focus of this release is?

18 A [MR. KOHLMANN]: The main focus of this release is, first of
19 all, to communicate al Qaeda's political goals, its grievances
20 against the West, to show video footage of al Qaeda terrorist
21 training camps inside of Afghanistan in order to encourage
22 individuals to travel to those camps, and also for al Qaeda and Usama
23 bin Laden personally to claim responsibility for the October 2000

1 attack on the USS COLE off the coast of Yemen. Not just to claim
2 responsibility, but to suggest that this is the ideal kind of
3 operation, and then in the future other al Qaeda operatives should
4 seek to carry out similar if not greater operations directed at both
5 the United States, its allies, civilian and military.

6 Q [MR. TRIVETT]: And did you excerpt this video in putting
7 together "The al Qaeda Plan"?

8 A [MR. KOHLMANN]: Yes.

9 TC [MR. TRIVETT]: Now, I'm going to show the next demonstrative
10 aid to the Military Judge and ask that that also be made available to
11 the witness and the members.

12 MJ [CAPT ALLRED]: Okay.

13 Q [MR. TRIVETT]: Mr. Kohlmann, do you recognize the image on
14 the screen?

15 A [MR. KOHLMANN]: Yes, I do.

16 Q [MR. TRIVETT]: What do you recognize that image as?

17 A [MR. KOHLMANN]: This is the opening titled sequence from the
18 As-Sahab Media Foundation film, "The Wills of the Martyrs of New York
19 and Washington." This video is also known by a second name, which
20 is, "The Will of Ahmed al-Haznawi."

21 Q [MR. TRIVETT]: And do you know who Ahmed al-Haznawi is?

22 A [MR. KOHLMANN]: Yes. Ahmed al-Haznawi was one of the suicide
23 hijackers responsible for executing the September 11th terrorist

1 attacks on the United States.

2 Q [MR. TRIVETT]: And in general terms--again, I know that this
3 is--we will see more about this later--what is the main focus of this
4 release from al Qaeda?

5 A [MR. KOHLMANN]: The main focus of this release from al Qaeda
6 is to claim responsibility for the September 11th, 2001 terrorist
7 attacks on the United States, to feature the last will, last
8 videotaped will and testament of Ahmed al-Haznawi, to make clear that
9 al-Haznawi has a relationship with Usama bin Laden, that he has been
10 motivated by al Qaeda, that he is doing this of his own free will,
11 and that, again, it is--it is the work of al Qaeda and Usama bin
12 Laden.

13 Q [MR. TRIVETT]: Okay. Do you recognize the 19 faces that are
14 depicted on this image?

15 A [MR. KOHLMANN]: Yes.

16 Q [MR. TRIVETT]: Who do you know those individuals to be?

17 A [MR. KOHLMANN]: These are the 19 suicide hijackers
18 responsible for executing the September 11th, 2001 terrorist attacks
19 on the United States.

20 Q [MR. TRIVETT]: Are you able to identify Usama bin Laden's
21 voice specifically on this recording?

22 A [MR. KOHLMANN]: Yes.

23

1 Q [MR. TRIVETT]: And how is it that you've become able to
2 identify Usama bin Laden's voice on these recordings?

3 A [MR. KOHLMANN]: Well, unfortunately, I've reviewed so many of
4 these recordings now that I know Bin Laden's voice better than I know
5 the voices of my own family members.

6 Q [MR. TRIVETT]: Do you use excerpts of this video in creating
7 "The al Qaeda Plan"?

8 A [MR. KOHLMANN]: Yes.

9 TC [MR. TRIVETT]: I now ask that the next demonstrative aid be
10 shown to the Military Judge and, with his permission, the witness and
11 the members.

12 MJ [CAPT ALLRED]: Very well.

13 Q [MR. TRIVETT]: Mr. Kohlmann, do you recognize the image on
14 your screen?

15 A [MR. KOHLMANN]: Yes.

16 Q [MR. TRIVETT]: What do you recognize it as?

17 A [MR. KOHLMANN]: This is one of the initial images from a
18 video that was produced by the As-Sahab Media Foundation, which was
19 titled, "The Will of Abulabas El Januvi."

20 Q [MR. TRIVETT]: Do you know him by another name?

21 A [MR. KOHLMANN]: Yes.

22 Q [MR. TRIVETT]: What name do you know him by, as well?

23 A [MR. KOHLMANN]: Abdul Aziz al Marri.

1 Q [MR. TRIVETT]: Who do you know Abdul Aziz al Marri to be?

2 A [MR. KOHLMANN]: Abdul Aziz al Marri was one of the suicide
3 hijackers responsible for executing the September 11th terrorist
4 attacks on the United States.

5 Q [MR. TRIVETT]: Now, does this, the focus of this film differ
6 at all from the film we just watched on "The Martyrs of New York and
7 Washington"?

8 A [MR. KOHLMANN]: It differs in the extent that it covers--it
9 covers, again, al Qaeda's claim of responsibility for the 9/11
10 terrorist attacks. It indicates that Usama bin Laden was the
11 individual responsible for organizing and coordinating these attacks.
12 But whereas the film, the martyrs--"The Wills of the Martyrs of New
13 York and Washington" contained the last will and testament of 9/11
14 hijacker Ahmed al-Haznawi, in this case it is the last will and
15 testament of Abdul Aziz al Marri.

16 TC [MR. TRIVETT]: I would now ask that the next demonstrative
17 aid be made available to the Military Judge, and, with his
18 permission, to the witness and the members.

19 MJ [CAPT ALLRED]: Very good. Very well.

20 Q [MR. TRIVETT]: Mr. Kohlmann, do you recognize the image on
21 your screen?

22 A [MR. KOHLMANN]: Yes.

23

1 Q [MR. TRIVETT]: What do you recognize it as?

2 A [MR. KOHLMANN]: This is the title screen from yet another
3 As-Sahab Media Foundation video. This video was released in
4 September of 2006. And the title of this video is "Knowledge is for
5 Acting Upon."

6 Q [MR. TRIVETT]: And, again, just very generally, what was the
7 primary focus of this film?

8 A [MR. KOHLMANN]: The primary focus of this film was for al
9 Qaeda to retell the events of September 11th, 2001, to detail the
10 planning, the organization and coordination that had gone--that had
11 gone into the September 11th terrorist attacks on the United States,
12 to explain the nature of those attacks, and to explain how those
13 attacks had been part of a sequence of operations planned and carried
14 out by al Qaeda starting in the 1990s and culminating, again, with
15 the 9/11 terrorist attacks.

16 The idea behind this film is not just to claim
17 responsibility for the attacks, it's not just to detail al Qaeda's
18 involvement in those attacks; it's also specifically, as the title
19 indicates, "Knowledge is for Acting Upon," to encourage others to
20 carry out similar attacks in the same vein as the 9/11 hijackers.

21 [END OF PAGE]

22

23

1 Q [MR. TRIVETT]: Are there any specific references that claims
2 the responsibility for the East Africa embassy bombings in this--in
3 this movie specifically?

4 A [MR. KOHLMANN]: There are specific claims of responsibility
5 for the 1998 East Africa embassy bombings, the October 2000 suicide
6 bombing of the USS COLE and the September 11th, 2001 terrorist
7 attacks on United States.

8 Q [MR. TRIVETT]: Did you use excerpts in this--from this film
9 in your creation of "The al Qaeda Plan," as well?

10 A [MR. KOHLMANN]: Yes.

11 Q [MR. TRIVETT]: Now, did As-Sahab release any of their videos
12 in English?

13 A [MR. KOHLMANN]: Many of them, yes.

14 Q [MR. TRIVETT]: In fact, the videos that we just referenced--
15 the USS COLE video, the wills of the New York and Washington martyrs,
16 the will of Abdul Aziz al-Marri, "Knowledge is for Acting Upon"--were
17 they all released in English?

18 A [MR. KOHLMANN]: They were originally released in Arabic;
19 however, they also contain English subtitles on the bottom. And in
20 the case of a video such as "Knowledge is for Acting Upon," and even
21 portions as early as--portions of videos as early as "The
22 Destruction of the USS COLE," you actually have English narration, as
23 well, in the video.

1 Q [MR. TRIVETT]: And so if there is any English narration or if
2 the subtitles are viewed on the screen in "The al Qaeda Plan," those
3 are the official translations that al Qaeda has put forth; correct?

4 A [MR. KOHLMANN]: Aside from my own narration, yes.

5 Q [MR. TRIVETT]: Right. And by narration, I mean the narration
6 on the movie, not the overlay----

7 A [MR. KOHLMANN]: ----No, no. These are all the original
8 English subtitles provided by al Qaeda itself. I did not
9 editorialize the subtitles, I did not change them. They are the raw
10 English subtitles and narration provided by the As-sahab Media
11 Foundation and al Qaeda itself.

12 Q [MR. TRIVETT]: Now, other than the movies released by
13 As-Sahab, what other types of information did you rely upon in
14 creating "The al Qaeda Plan"?

15 A [MR. KOHLMANN]: A wide variety of basically primary and
16 secondary sources. First of all, my interviews with individuals who
17 had fought with the Arab-Afghans, with other communiqués, written
18 communiqués that had been released by Arab-Afghan mujahideen
19 organizations, video recordings and audio recordings released by
20 other Arab-Afghan mujahideen organizations, exhibits submitted in
21 criminal cases in the United States involving al Qaeda defendants,
22 sworn testimony of--sworn court testimony, I should say, of former al

1 Qaeda members and al Qaeda Shura council members in U.S. federal
2 court, and similar documentation.

3 Q [MR. TRIVETT]: In your opinion as a terrorism researcher, are
4 all of the al Qaeda source documents that you relied upon in your
5 presentation authentic?

6 A [MR. KOHLMANN]: Yes.

7 Q [MR. TRIVETT]: Are the source documents all the type
8 generally accepted as valid sources by experts in your field?

9 A [MR. KOHLMANN]: Yes.

10 TC [MR. TRIVETT]: I now would like the Military Judge to see
11 what's going to be marked as the next prosecution exhibit number in
12 order, and, with his permission, shown to the witness only.

13 MJ [CAPT ALLRED]: You may.

14 Q [MR. TRIVETT]: Mr. Kohlmann, do you recognize the document on
15 your screen?

16 A [MR. KOHLMANN]: Yes.

17 Q [MR. TRIVETT]: What do you recognize that document as?

18 A [MR. KOHLMANN]: This is the first page of the script to the
19 video production titled "The al Qaeda Plan."

20 Q [MR. TRIVETT]: Now, do you ever do expert reports in other
21 cases that you testify about, prior to your testimony?

22 A [MR. KOHLMANN]: In almost every single one, yes.

23

1 Q [MR. TRIVETT]: Would you say that this script is similar in
2 some ways to those reports?

3 A [MR. KOHLMANN]: Yes, it's quite similar. This is--because of
4 the fact that this is a video script, it's obviously more succinct
5 than the traditional expert report which I would write, which would
6 be highly detailed and which would be more in the context of
7 something you would read in a book. That is not producible in a
8 video recording. But in the same way as my traditional expert
9 reports, you'll notice that everything here is carefully footnoted,
10 all the original sources which I have used are readily obvious and
11 available to anyone that's interested, and the information that's
12 produced in here is exactly the same as what you would find in my
13 regular expert reports, I guess you would call them.

14 Q [MR. TRIVETT]: Is this script actually verbatim to the
15 narration in the video?

16 A [MR. KOHLMANN]: It is verbatim.

17 Q [MR. TRIVETT]: Your narration?

18 A [MR. KOHLMANN]: My narration, correct.

19 Q [MR. TRIVETT]: To the extent al Qaeda is narrating anything
20 else, that's not in the script; right?

21 A [MR. KOHLMANN]: That's correct. No, it's not.

22

23

1 Q [MR. TRIVETT]: And are all the sources that you cite to in
2 this script generally accepted as valid sources by experts in your
3 field?

4 A [MR. KOHLMANN]: Yes.

5 TC [MR. TRIVETT]: At this time the government is going to offer
6 the script of "The al Qaeda Plan" as the next prosecution exhibit
7 number in order.

8 CDC [MR. SWIFT]: I have an objection and would like a 39(a) or
9 803.

10 MJ [CAPT ALLRED]: Okay. Members, let me ask you to withdraw to
11 the deliberation room while I hear the counsel's objection in regard
12 to this issue.

13 BAILIFF: All rise **[all persons did as directed and the members**
14 **withdrew from the courtroom].**
15 **[The military commission terminated and the R.M.C. 803 session**
16 **commenced at 1155, 28 July 2008.]**

17 TC [MR. TRIVETT]: Should the witness remain?

18 CDC [MR. SWIFT]: I have no objection to the witness remaining.

19 MJ [CAPT ALLRED]: I don't think his testimony will be
20 influenced by the objection, but----

21 TC [MR. TRIVETT]: Okay.

22 CDC [MR. SWIFT]: I said no objection.

23 MJ [CAPT ALLRED]: So what is your----

1 CDC [MR. SWIFT]: My objection, first off, is that it's
2 cumulative and it's hearsay. What we're doing is publishing both the
3 script and then the movie and then the testimony of the same part.
4 Generally speaking, you can--I don't object to him testifying to his
5 expertise in particular areas and testifying from the stand, but then
6 to hand over and say, well, here's my published report as well
7 exceeds that scope, Your Honor.

8 If he's offering it as a foundational appellate exhibit to
9 the Military Judge to support his finding----

10 MJ [CAPT ALLRED]: Well, I don't know. I mean, I've never heard
11 of an expert report such as Mr. Kohlmann describes. I don't know how
12 those are used in other courts.

13 CDC [MR. SWIFT]: Yes, sir.

14 MJ [CAPT ALLRED]: Are you planning to play the video?

15 TC [MR. TRIVETT]: We are, sir.

16 MJ [CAPT ALLRED]: Well, then, I think Mr. Swift has a point
17 that the script is cumulative.

18 Would you like the script instead of the video?

19 TC [MR. TRIVETT]: Well, sir, clearly--clearly the prosecution's
20 preference is to play the video. However, we think that it is
21 important that the members be able to refer back and quickly
22 reference what is a verbatim testimony of the witness in their
23 deliberations, if necessary.

1 MJ [CAPT ALLRED]: Okay.

2 TC [MR. TRIVETT]: It's not unduly cumulative. It wouldn't take
3 more than a second to enter it into evidence. We're not going to
4 focus any more on the script at this time.

5 MJ [CAPT ALLRED]: Well, I'm going to sustain----

6 CDC [MR. SWIFT]: That----

7 MJ [CAPT ALLRED]: ----defense's objection. This--this will give
8 this witness's testimony more--potentially more weight with the
9 members than the testimony of every other witness where we don't have
10 a verbatim transcript.

11 TC [MR. TRIVETT]: Very well, then.

12 MJ [CAPT ALLRED]: And this is for the same reason that I
13 didn't--I'm not sending back their expert's CV.

14 CDC [MR. SWIFT]: Yes, sir.

15 MJ [CAPT ALLRED]: I don't--I want them to hear the witness,
16 make their notes, and not unnecessarily be--you know, have the
17 witness's testimony accentuated. And so I'll sustain the defense
18 objection.

19 What's the number on this exhibit, LN1, this prosecution
20 exhibit? 122? Okay. The objection to Prosecution Exhibit 122 is
21 sustained.

22 CDC [MR. SWIFT]: While we're out, rather than having rebuttal,
23 perhaps this is a good time to address the relevance issue. We've

1 heard about a lot of the videos. Only one of which I have heard was
2 actually produced or released at the time that my client was free,
3 the vast majority of these videos are afterwards, and the evidence
4 being presented in it. I'm not----

5 MJ [CAPT ALLRED]: You're objecting now to the----

6 CDC [MR. SWIFT]: ----sure what the relevance of what al Qaeda
7 says in 2006 has to do with my client, who was captured on November
8 24th, 2001. And I'd like to hear a proffer of how the government
9 puts that this is relevant.

10 I also don't understand that the government is putting
11 forth that my client was a member of the 9/11 conspiracy, that he was
12 involved in the planning, involved in the execution, involved in the
13 production of these videos in any knowing or knowledgeable way.

14 And so I want to understand the relevance of why this is
15 coming in and what's its purpose, because it could easily confuse the
16 members into believing that somehow Mr. Hamdan is part of this.

17 MJ [CAPT ALLRED]: You're talking about the video?

18 CDC [MR. SWIFT]: The video itself, yes, Your Honor.

19 MJ [CAPT ALLRED]: Okay. It hasn't been offered yet but you're
20 objecting because we have the members out?

21 CDC [MR. SWIFT]: Yeah, and to--I can see where it's going, and
22 perhaps we can----

23

1 MJ [CAPT ALLRED]: Okay. So relevance is your--is your
2 objection?

3 CDC [MR. SWIFT]: And 403, bias, Your Honor.

4 MJ [CAPT ALLRED]: Okay. Finally we get to the video.

5 DC [LCDR MIZER]: Prejudice.

6 CDC [MR. SWIFT]: Prejudice.

7 MJ [CAPT ALLRED]: Relevance, 401----

8 CDC [MR. SWIFT]: And bias.

9 MJ [CAPT ALLRED]: ----403.

10 CDC [MR. SWIFT]: Yes, Your Honor.

11 MJ [CAPT ALLRED]: Okay.

12 TC [MR. TRIVETT]: Yes, sir. Thank you. And, specifically, we
13 were going to get to offer "The al Qaeda Plan," which is the next
14 step in this, so it is certainly a timely objection.

15 There are many--well, there are several bases of relevancy
16 to "The al Qaeda Plan," specifically, the first one being that the
17 prosecution has the burden of proof beyond a reasonable doubt that al
18 Qaeda was engaged in an armed conflict with the United States and
19 that they are an international terrorist organization engaged in
20 hostilities against the United States.

21 That alone makes all of the statements made in the course
22 of furtherance of conspiracy, which is what the prosecution's
23 position is regarding what propaganda is. You're also--all

1 statements made against the penal interests of the people who are
2 making them. And they are made on behalf of the organization to
3 which we are in an armed conflict with.

4 The fact that it was released after Mr. Hamdan was captured
5 is irrelevant to the fact that they are taking responsibility for
6 acts that occurred when the Defendant was, in fact, a part of this
7 conspiracy to kill Americans.

8 And just so we're clear, the prosecution has always alleged
9 and set forth in the charge sheet that the accused was part of a
10 conspiracy to attack civilians, to attack civilian objects, to commit
11 murder in violation of the law of war, and to commit acts of
12 terrorism. All of--all of these movies are proof of the conspiracy
13 to which we are alleging he's a part of.

14 Now, that's quite different than saying that operationally
15 he knew that the towers were going to get hit on 9/11, or that it was
16 specifically the embassies that were going to be attacked.

17 But the evidence on the record is quite clear that he was
18 aware that Americans were going to be killed, and that's always been
19 the prosecution's position in this. He is part of an over-arching
20 conspiracy that involves several violations of the law of war.

21 Whether he knows the specifics of the attack or not, there
22 is evidence on the record to establish that he knew Americans were
23 going to be killed, and that he played this part in protecting Usama

1 bin Laden to ensure that people will continue to be killed after East
2 Africa, after the USS COLE, and even after 9/11, when he was caught
3 with missiles coming back to the battlefield.

4 So all of the evidence within "The al Qaeda Plan" and al
5 Qaeda's own admissions are completely relevant to the issue of the
6 armed conflict as well as the existence of the conspiracy to which we
7 have charged him.

8 Now, evidence only needs to be relevant on only issue----

9 MJ [CAPT ALLRED]: Okay. I am going to overrule the objection
10 on the basis of relevance.

11 Turn to the second objection, which is that...I guess that
12 the evidence is more prejudicial than it is probative. Is that the
13 substance of your objection?

14 CDC [MR. SWIFT]: It is, Your Honor. And for one part of it, I
15 think you'll--the government makes a valid point, which I am ready to
16 accede to, that al Qaeda is an international terrorist organization.
17 That's an element. They need to prove it. I think the--you know,
18 when one makes a 403 bias, one needs a solution put forth.

19 And we will stipulate, absolutely, that al Qaeda was an
20 international terrorist organization. We're prepared to stipulate
21 that as a matter of fact in this case, and so that one is gone
22 required from the part.

1 I think that with regards to the question of armed
2 hostilities existing, that we will stipulate to the fact that attacks
3 occurred during these periods of time and that----

4 MJ [CAPT ALLRED]: Okay. I'm not--I'm not asking you to--your
5 offer to stipulate is generous. Apparently the government has
6 declined that offer.

7 CDC [MR. SWIFT]: Yes.

8 MJ [CAPT ALLRED]: So make your--make your record as to why this
9 is more prejudicial than probative.

10 CDC [MR. SWIFT]: Yes, Your Honor. The--the prejudice is--is
11 that Mr. Hamdan has not been shown in any of these attacks to be
12 directly involved; that the attacks focus on others than Mr. Hamdan
13 for which there has been no link beyond Usama bin Laden's statement.

14 The vast majority of these statements are made after
15 Mr. Hamdan was taken into custody, and that the relationship to
16 Mr. Hamdan, therefore, is suspect at best.

17 Multiple hearsay also within this portion, though some may
18 be statements against penal interest, the conspiracy exception to
19 that rule extends only for such time as we would say that the
20 conspiracy was ongoing and one was a participant in it. Thus,
21 statements made after one has been taken into custody, the conspiracy
22 might have continued, are no longer relevant to that person.

1 So while there's a well-founded part of conspiracy, I want
2 to be very clear I'm objecting to those statements made afterwards.
3 Now, he had an expert on the stand, and experts can use hearsay and
4 other things in formulating their opinions, and it would not be
5 improper for Mr. Kohlmann to rely in part on things that he's learned
6 after my client was taken into custody, but that doesn't mean that it
7 comes into evidence, that that underlies his opinion. So the
8 government has a vehicle, the vehicle is sitting on the stand, rather
9 than utilizing videos and other excerpts that occurred after my
10 client was taken into custody.

11 MJ [CAPT ALLRED]: Okay. What's the government's response, now,
12 to those points?

13 CTC [MR. TRIVETT]: Initially in regard to Mr. Swift's
14 representation on the rule of admissibility based on the hearsay
15 exception, I think he's got it wrong.

16 There's two separate hearsay exceptions; one being a
17 statement against a declarant's interest in which if you can see that
18 the declarant is unavailable, which would mean at large or certainly
19 outside the custody of the United States, that those may be admitted
20 into evidence on that basis.

21 The second basis is statements made in the course and
22 furtherance of a conspiracy. The prosecution's position has always

1 been that this conspiracy began in 1989 and that it continues to
2 date.

3 While Mr. Swift may be correct if we were trying to use a
4 statement made in the course and furtherance of conspiracy by his
5 client after he was captured, that that would no longer constitute a
6 statement made in the course of furtherance of the conspiracy for
7 Mr. Hamdan.

8 All of the statements that we're seeking to put forth are
9 conspirators in the al Qaeda organization still at large, which makes
10 Mr. Swift's representation of the rule just incorrect. So that's my
11 first response in regard to whether or not this will constitute
12 admissible hearsay under the exceptions.

13 Even if it wouldn't constitute admissible hearsay under the
14 exceptions, we provided hearsay notice of our filing, which was made
15 back in February, so he was fully aware that we intended to present
16 "The al Qaeda Plan" in its entirety. And while we believe that all of
17 it, because it's subject to Mr. Kohlmann's cross examination, it
18 should all be admissible because it's inherently reliable and he will
19 be subject to cross-examination which mitigates any other concerns
20 for hearsay.

21 As an expert, which you have found him to be; he's clearly
22 allowed to rely on certain hearsay in order to put forth his
23 opinions. So to the extent that he's putting an opinion forward,

1 he's not necessarily also showing what his opinion is based on; he's
2 simply showing other open source videos. So that would be my
3 response just to the conspiracy hearsay, in regards to the statements
4 being admissible hearsay.

5 MJ [CAPT ALLRED]: Okay. Well, apparently this--this 90-minute
6 video has numerous statements made by As-Sahab video people.

7 CTC [MR. TRIVETT]: Yes, sir, on behalf of al Qaeda, which is a
8 terrorist organization that we are at war with, which is all relevant
9 evidence to establish that we are at war with this organization.

10 MJ [CAPT ALLRED]: What--what are those statements offered to
11 prove? I mean, it's hard--it's hard for me to, I guess, decide that--
12 there are a hundred different statements in this movie. Is each one
13 offered to prove the truth of the matter?

14 CTC [MR. TRIVETT]: Absolutely, sir. They are. I mean, and--
15 and they're offered to prove several different things that we need
16 have.

17 MJ [CAPT ALLRED]: So statements against interest refers to
18 statements made by the accused; right?

19 CTC [MR. TRIVETT]: No. A statement against interest could be
20 someone other than the accused. If someone makes a statement against
21 their own interests, say an accused is--is being tried for a bank
22 robbery, and there's another person who said that he had committed
23 the bank robbery instead, and we couldn't find that person. That is

1 a statement against interest of that individual, and his statement
2 would come in under the hearsay exception. So that's a statement
3 against interest, which we believe many of these statements are
4 because they're talking about criminal activity that they have
5 committed against the United States, but they are also statements
6 made in the course of furtherance of the conspiracy.

7 The propaganda piece is an important part of this
8 continuing conspiracy. It shows that they committed these crimes
9 against America, and it's asking for recruits to come and join their
10 fight against America, as well. So these are all statements made in
11 the course of furtherance of the conspiracy.

12 CDC [MR. SWIFT]: And perhaps counsel's statement right there
13 goes to the heart of my objection. There is no theory that
14 Mr. Hamdan's conspiracy continued after November 24th, yet the
15 statements they seem to bring in are part of recruitment and efforts
16 to the continuing conspiracy that went on without Mr. Hamdan. And so
17 we are going to confuse the members.

18 At a minimum, it is extraordinarily biased, again, to say,
19 well, in 2006 this is what al Qaeda is doing, and then relate it to
20 Mr. Hamdan, who was captured in 2001, on November 24.

21 And so where the government says, yes, there is a
22 continuing conspiracy, yes, there is a continuing plan, yes, there is
23 a continuing threat, to bring that in to Mr. Hamdan's trial, all

1 recent activity which occurred since, is extraordinarily prejudicial
2 to him and has very little relevance, if any.

3 MJ [CAPT ALLRED]: Well, I've been trying to pay attention to
4 Mr. Kohlmann's testimony. I think what he said about the 2006 video
5 was that it accepted responsibility for attacks that occurred before
6 2001, and those do appear in the charge against Mr. Hamdan. So I
7 guess I'm not particularly persuaded by your argument that the 2006
8 statement reflects subsequent developments and conspiracy after
9 Mr. Hamdan was captured.

10 Well, I'd like to think about this, actually. Its 10
11 minutes after 12:00. And do you have some other productive areas of
12 examination you could explore with Mr. Kohlmann before we recess for
13 lunch, or are you right at the point where you want to put the video
14 in and play it?

15 CTC [MR. TRIVETT]: Yes, sir. I see we're at the point where we
16 want to put the video on and play it. Now, our plan was to put it on
17 section by section and follow up with certain questions relevant to
18 that specific section.

19 MJ [CAPT ALLRED]: Well, in that case, I think the solution is
20 for you to put on the first section, ask Mr. Kohlmann whatever
21 follow-up questions you might have, and then at 12:30 we'll recess
22 for lunch and I'll give some more thought to your objection as it
23 pertains to--you know, the subsequent statements in 2006 and beyond.

1 CTC [MR. TRIVETT]: Well, and just so Your Honor is clear, "The
2 al Qaeda Plan" was put together and specifically to address material
3 and support charges on the conspiracy charge. I mean, it was
4 tailored to the charges.

5 That being said, it was done chronological. So if there
6 was a 2006 release from al Qaeda where they take responsibility for
7 the September 11th event, that's going to be chronologically in the
8 9/11 section. That's not going to be after some point in time.
9 So just so you're clear, the first section talks about the general--
10 the Soviet-Afghan war and how al Qaeda spawned from the Soviet-Afghan
11 war. But right after that point in time, we're getting into the USS
12 COLE video releasing. Because, again, sometimes they do historic
13 things in the USS COLE video that we can put prior to October of
14 2000.

15 So just to--to give a----

16 MJ [CAPT ALLRED]: Okay.

17 TC [MR. TRIVETT]: ----make the judge aware----

18 MJ [CAPT ALLRED]: Section 2 of the video.

19 CDC [MR. SWIFT]: Well, to be clear, on the first section I
20 understand. I also want to point something out to the Military
21 Judge.

22 To my understanding, "The al Qaeda Plan" video and one of
23 its particular problems was that it was produced at the time that the

1 government was also charging on criminal enterprise as a theory. And
2 that part of that looked at the joint criminal enterprise as the idea
3 that all parties who were part of al Qaeda were also part of all--
4 part and parcel of all claims.

5 Subsequently, this court ruled that joint criminal
6 enterprise is not an available charge to the government. And the
7 problem is the joint criminal enterprise flows throughout "The al
8 Qaeda Plan" video part, the other parts put together by the
9 prosecution. It was thought through by the prosecution at that time.

10 The change in what the charge sheet is makes it much more
11 allowable and much more prejudicial because it can move into the
12 theory that the Military Judge has already said does not come into
13 this trial.

14 CTC [MR. TRIVETT]: Sir, if I could be heard on that issue?

15 MJ [CAPT ALLRED]: Absolutely.

16 CTC [MR. TRIVETT]: In regards to the joint criminal enterprise,
17 again, I think Mr. Swift misrepresents what joint criminal enterprise
18 as a theory of liability under the conspiracy theory would have
19 allowed.

20 The prosecution completely disagrees with the fact that a
21 joint criminal enterprise can somehow swoop up every single member of
22 al Qaeda without the government having been able to prove, one, that
23 he knew what the purpose of the enterprise was; and, two, that he

1 joined it willfully. That is, knowing what the intentions were and
2 that the intentions would further.

3 In many ways joint criminal enterprise and conspiracy are
4 the same thing. It's the same. There are just two distinct theories
5 of criminal liability under conspiracy, but to suggest somehow that
6 "The al Qaeda Plan" was created in a way that would have swooped in
7 every member of al Qaeda regardless of whether or not they knew its
8 intentions or how the intentions would further it is a
9 misrepresentation, I believe, of what the state of the law was for
10 joint criminal enterprise.

11 That being said, this is all completely relevant to
12 establish the existence of the conspiracy itself.

13 MJ [CAPT ALLRED]: You've won the relevance objection.

14 CTC [MR. TRIVETT]: Yes. So I just wanted--I want to clarify
15 that, because that was not--you know, to the extent that Your Honor
16 is concerned about this joint criminal enterprise, the government's
17 position is that this is all completely relevant to the conspiracy,
18 regardless of whether or not you---

19 MJ [CAPT ALLRED]: You've already won the relevance objection.
20 We don't need any argument on it.

21 CTC [MR. TRIVETT]: Yes, sir.

22 MJ [CAPT ALLRED]: Or hearsay. Or hearsay. That's what I want
23 to think about during the lunch.

1 CTC [MR. TRIVETT]: Yes, sir.

2 MJ [CAPT ALLRED]: Why don't you--why don't we call the members
3 back in and show Part 1? I think that's five or ten minutes long,
4 and that should take us to the lunch break, and then we can convene
5 later to take up the rest of the objections.

6 CTC [MR. TRIVETT]: Yes, sir.

7 MJ [CAPT ALLRED]: Can you ask the members to return to the
8 courtroom, please?

9 CTC [MR TRIVETT]: Sir, just to clarify, it's actually the
10 prologue that's the first part.

11 MJ [CAPT ALLRED]: Well, whatever you want to start with. I
12 think we are safe to by it.

13 BAILIFF: All rise **[all persons did as directed and the members**
14 **entered the courtroom].**

15 **[The R.M.C. 803 session terminated and the military commission**
16 **commenced at 1216, 28 July 2008.]**

17 MJ [CAPT ALLRED]: Please be seated.

18 **[All persons did as directed.]**

19 MJ [CAPT ALLRED]: Members returned to the courtroom. Counsel,
20 please continue.

21 CTC [MR. TRIVETT]: Based on the prior testimony, sir, at this
22 point, the prosecution would move into evidence the motion picture

1 created by Mr. Evan Kohlmann entitled "The al Qaeda Plan" and ask
2 that we be able to play the prologue.

3 MJ [CAPT ALLRED]: You may play the prologue.

4 CTC [MR. TRIVETT]: I believe the prologue is approximately 14
5 minutes long.

6 MJ [CAPT ALLRED]: Perfect. Can the members see?

7 PRES: Yes, sir.

8 MJ [CAPT ALLRED]: Okay. You can publish it to the members and
9 the witness.

10 **[The video was played at 12:17:02].**

11 **[The video was stopped at 12:31:35].**

12 MJ [CAPT ALLRED]: Perfect timing. We'll take a recess for
13 lunch. I'll ask you to return to the courtroom at 1400.

14 **[The military commission recessed at 1231, 28 July 2008.]**

15 **[The R.M.C. 803 session was called to order at 1403, 28 July 2008.]**

16 MJ [CAPT ALLRED]: Court is called to order. The members are
17 absent, but the other parties present when the court last recessed
18 are once again present.

19 During the lunch recess, I reviewed again "The al Qaeda
20 Plan" in its entirety with the defense's objection as to hearsay and
21 403 in mind--Rule 403 in mind. I note that the vast majority of the
22 video content is, in fact, Mr. Kohlmann's voice narrating and
23 describing the history of al Qaeda, but that his voice is

1 interspersed with quotations from or recordings of various al Qaeda
2 leaders, and these are the hearsay statements to which the defense
3 objects.

4 I'm unable to rule individually on each of those
5 statements, but I note that statements of a co-conspirator during the
6 course of and in furtherance of a conspiracy are defined under
7 Military Rule of Evidence 801(d)(2)(e) as not hearsay, and that many
8 of the statements contained in the video are probably not hearsay
9 under this rule.

10 I note that statements of the declarant's then existing
11 state of mind or emotion, including statements reflecting intent,
12 plan, or motive, are excluded from the definition of hearsay under
13 Rule 803(3) Military Rule of Evidence, and these are, therefore, not
14 hearsay.

15 I note that some of the statements are not offered--I don't
16 think they're going to be offered to prove the truth of the matter
17 asserted, but to reflect the statement--of the fact that the
18 statement was made or to show something like the declarant's intent
19 or plan, motive, or that they contain religious exhortation and not
20 necessarily true. These are excluded from the definition of hearsay
21 by 801(c) of the Federal and Military Rules.

22 Thus, while I leave open to the defense the option of
23 objecting to a particular statement if they believe it's being

1 offered for the truth of the matter asserted and no such exception
2 applies, my sense is that the majority of the statements of al Qaeda
3 leaders that are repeated in "The al Qaeda Plan" video would, in
4 fact, qualify for an exception to the hearsay rule under existing and
5 long established rules of evidence that do not take advantage of the
6 liberal standard that is also available in this proceedings. And so,
7 for the present, I overrule the defense's objection as to hearsay.

8 With respect to their objection under Rule 403, I find that
9 Parts 1, 2, 3, 4, 5, and 6 of the video are not more prejudicial than
10 probative and that they would not constitute confusion of the members
11 or a waste of time.

12 With respect to Part 7 of the video, I find that the
13 photographs of the 9/11 attacks, including the screaming and the
14 carnage and the destruction are more prejudicial than probative, and
15 objection to that part, the Part 7 of the video, is sustained.

16 In order to further minimize any prejudice to the accused
17 that might come from showing any part of these videos, I intend to
18 give the members a limiting instruction with respect to the video
19 before we play the remainder of it.

20 Any questions about this?

21 CDC [MR. SWIFT]: Just what your thought was on limiting----

22 MJ [CAPT ALLRED]: Well, the limiting instruction says this:

23 "Many of the events depicted in the video did not involve the accused

1 and are events in which he did not participate or have knowledge.
2 This material is admitted to help you understand the nature of the al
3 Qaeda organization, to show the nature and extent of its conflict
4 with the United States, and to support a finding that al Qaeda is an
5 international terrorist organization. Counsel will argue during
6 their closing arguments about which of these events actually involved
7 the accused." Something along those lines.

8 CDC [MR. SWIFT]: Yes, Your Honor.

9 MJ [CAPT ALLRED]: Okay.

10 CTC [MR. TRIVETT]: Sir, if the prosecution may be heard on
11 that. In regards to the period instruction specifically, we think
12 it's a misrepresentation to say that the accused was not aware of
13 pending attacks. I mean, clearly he--there was--there's no evidence
14 to suggest that he knew the specific----

15 MJ [CAPT ALLRED]: But the movie starts in Somalia or some parts
16 of Africa long before he joined. It starts in the late '80s. So
17 it's fair to say that many of the events depicted in the video did
18 not involve the accused.

19 I'll let you argue which ones he knew about----

20 CTC [MR. TRIVETT]: Yes, sir.

21 MJ [CAPT ALLRED]: ----and which ones could be attributed to him,
22 even if you go back to the fact or before the fact, that's--that's
23 for you to argue. That's for the members to decide.

1 CTC [MR. TRIVETT]: Yes, sir.

2 MJ [CAPT ALLRED]: But I want to make sure that the members
3 understand now as they watch this video that Mr. Smith--or Swift says
4 is true; Mr. Hamdan did not know all of these things or was a part of
5 all of these things. It's historical background.

6 CTC [MR. TRIVETT]: Yes, sir. As long as we're free to argue
7 later on that, that--that's fine.

8 A second point of clarification on Part 7 specifically.
9 Are you ruling that all of Part 7 is inadmissible or just parts of---
10 -

11 MJ [CAPT ALLRED]: Well, I don't know that you have the ability
12 to segregate out. My sense was that--I kind of ran out of time on
13 Part 7, to be honest with you, because the statement of Azzam the
14 American is kind of a diatribe that might be offered to prove the
15 truth of the matter asserted, and the statements of the martyrs,
16 their videos and other statements accepting responsibility for the
17 attack might also be offered to prove the truth of the matter
18 asserted.

19 So hopefully we will get through Parts 2 through 6 today,
20 and maybe I can look at that again tonight or maybe you can cut out,
21 maybe you don't need all of that stuff in there.

22 CTC [MR. TRIVETT]: Yes, sir. And there may be----

23

1 MJ [CAPT ALLRED]: My sense is there's something in there that's
2 more--more prejudicial than it is probative.

3 CTC [MR. TRIVETT]: Yes, sir.

4 MJ [CAPT ALLRED]: Specifically the videos of the planes
5 crashing into the towers and the people screaming I don't think
6 proves anything.

7 CTC [MR. TRIVETT]: Okay. If the prosecution may be heard on
8 that issue, sir. We believe that the attacks on the World Trade
9 Center are armed attacks to which the law of war and conflict apply.
10 We have the burden of proving not only that the attack happened, but
11 that al Qaeda was responsible for it and that it was part of a
12 continuing armed conflict that they waged against the United States.

13 MJ [CAPT ALLRED]: Sure.

14 CTC [MR. TRIVETT]: We need to be able to show that the attack
15 happened. That's all the----

16 MJ [CAPT ALLRED]: Well, Mr. Kohlmann can testify that it
17 happened. Everybody knows that it happened. My sense is that the
18 video depiction of the attack might be more prejudicial than
19 probative. So let's--let's proceed. And we're probably through
20 Parts 2--1 through 6 or whatever, whatever else is in line, and then
21 we can talk about how you want to clip or adjust Part 7.

22 CTC [MR. TRIVETT]: Yes, sir.

23 MJ [CAPT ALLRED]: To put on the parts you really need.

1 CTC [MR. TRIVETT]: Yes, sir.

2 MJ [CAPT ALLRED]: All right?

3 CTC [MR. TRIVETT]: Yes, sir.

4 MJ [CAPT ALLRED]: All right. Please ask the members to come
5 into the courtroom.

6 **[The R.M.C. 803 session terminated and the military commission**
7 **commenced at 1410.]**

8 BAILIFF: All rise **[all persons did as directed and the members**
9 **withdrew from the courtroom].**

10 MJ [CAPT ALLRED]: Please be seated **[all persons did as**
11 **directed].** The members have returned to the courtroom. Counsel may
12 be seated.

13 Mr. Trivett, you may continue your examination.

14 CTC [MR. TRIVETT]: At this point in time, the prosecution would
15 ask that Part 1 of the motion picture presentation entitled "The al
16 Qaeda Plan" be presented to the members.

17 MJ [CAPT ALLRED]: Is this one we haven't seen yet?

18 CTC [MR. TRIVETT]: Yes, sir. We've seen the Part 1, this is
19 part of it.

20 MJ [CAPT ALLRED]: Okay. Fair enough. I thought you were going
21 to ask Mr. Kohlmann about each section as they went along.

22 CTC [MR. TRIVETT]: We are throughout the parts.

23 MJ [CAPT ALLRED]: Okay.

1 CTC [MR. TRIVETT]: Not the--the prologue itself I haven't.

2 MJ [CAPT ALLRED]: Not the introductory portion?

3 CTC [MR. TRIVETT]: Yes, sir.

4 MJ [CAPT ALLRED]: Okay. Please play Part 1.

5 MJ [CAPT ALLRED]: Oh, I beg your pardon. Please stop the tape.

6 I'm sorry. Members, before we start this tape, I'd like to speak

7 with you with regard to it. Many of the events depicted in the video

8 that you are about to see did not involve the accused and there are

9 events in which he did not participate or have knowledge. This

10 material is admitted to help you understand the nature of the al

11 Qaeda organization, to show the nature and extent of its conflict

12 with the United States, and to support a finding that it is, in fact,

13 an international terrorist organization.

14 Counsel will argue later during their closing arguments

15 about which of these events the accused had knowledge of, was aware

16 of, or was involved in.

17 I want to warn you and advise you that not everything that

18 you see here should be considered evidence against the accused.

19 Fair enough?

20 CDC [MR. SWIFT]: Okay.

21 MJ [CAPT ALLRED]: Please play the video.

22 **[The video played at 2:12:33.]**

23 **[The video was stopped at 2:20:33.]**

1 Q [MR. TRIVETT]: Mr. Kohlmann, at this time, I'd like to follow
2 up with some questions relevant to the aspect of the exhibit we just
3 saw. Why do you find it so important to reference the Soviet-Afghan
4 war in the presentation?

5 A [MR. KOHLMANN]: Because the Soviet-Afghan war, as
6 demonstrated in the movie, really served as a crucible for which
7 Usama bin Laden, Dr. Ayman Zawahiri and others involved in--
8 ultimately involved in al Qaeda, came together, fought together,
9 conspiring with jihad together, and ultimately shaped the ideas that
10 would come to lead al Qaeda not just in the late 1980s, not just in
11 the early 1990s, but in and up until today through 9/11. These are
12 the same ideas that go all the way. And without an understanding of
13 how they came together and why they came together initially, I don't
14 think you can understand what they mean today, either.

15 Q [MR. TRIVETT]: Now, we also just saw the Shura Council which
16 was laid out. Would you describe al Qaeda as a hierarchical
17 organization?

18 A [MR. KOHLMANN]: No. Actually, it's mostly nonhierarchical.
19 In fact--excuse me, al Qaeda recruits have actually described how one
20 of the things that attracts recruits to al Qaeda is the fact that it
21 is not like a traditional terrorist organization in the sense that
22 there is a strict hierarchy, there's a strict leadership with lines
23 drawn to the bottom of the recruits.

1 The idea being that in al Qaeda if you show a strong degree
2 of loyalty, if you show an exemplary technical skill, if you show
3 particular commitment to the cause, philosophical commitment, a
4 willingness to die in the cause of jihad, that you can rapidly
5 accelerate through the ranks up into the hierarchy al Qaeda, and that
6 members of al Qaeda can actually serve in different roles. You can
7 have someone who serves on the media committee of al Qaeda and at the
8 same time also be in charge of its foreign operations and also be in
9 charge of other aspects of the organization.

10 Again, this is a minority of individuals. It's a
11 relatively small group of people, so the bonds that draw them
12 together are bonds of personal loyalty, are bonds of family. It's
13 not a political organization in the context that we would think of in
14 the West, or even, to be honest, even in the tradition of, like, for
15 instance, terrorist organizations in the 1970s.

16 Q [MR. TRIVETT]: Was one of the books that you used to produce
17 this section of the movie as one of your sources known as, "The Arab
18 Supporters in Afghanistan"?

19 A [MR. KOHLMANN]: Yes. In Arabic it's **[the witness spoke in**
20 **Arabic]**.

21 **[END OF PAGE]**

1 Q [MR. TRIVETT]: Now, I just heard you say the word "Ansar."

2 Can you explain what your understanding of Ansar is?

3 A [MR. KOHLMANN]: Well, "Ansar" means supporters or partisans,
4 but in this particular title the book itself was describing the
5 initial founding of al Qaeda in Afghanistan, so they went by the term
6 Ansar. They were referring to the people who were interviewed in the
7 book, namely Sheikh Usama bin Laden, Dr. Ayman Zawahiri, and other
8 senior members of the al Qaeda Shura Council and those who helped
9 found the group. The book was published in 1991.

10 Q [MR. TRIVETT]: So when they were referencing Ansar, just so
11 every one is clear, they were--that was a direct reference to al
12 Qaeda members?

13 A [MR. KOHLMANN]: The leadership of al Qaeda, the Shura
14 Council, yes.

15 CTC [MR. TRIVETT]: At this time, sir, we ask that Part 2 of the
16 movie be shown to the members.

17 **[Part 2 of the video was shown at 2:24:15 p.m.]**

18 **[The video was stopped at 2:31:40.]**

19 Q [MR. TRIVETT]: Now, Mr. Kohlmann, did Usama bin Laden give
20 any sermons against America when he was in the Sudan in the early
21 1990s?

22 A [MR. KOHLMANN]: Yes, he did.

23

1 Q [MR. TRIVETT]: Did these sermons ever make it outside of the
2 Sudan, to other places, especially the Arabian Peninsula?

3 A [MR. KOHLMANN]: It is my understanding that Usama bin Laden's
4 words and his ideas targeting the United States circulated widely in
5 the Arabian Peninsula.

6 Q [MR. TRIVETT]: At this point in time did he make any of those
7 statements public?

8 A [MR. KOHLMANN]: No.

9 CTC [MR. TRIVETT]: Sir, at this time we ask that Part 3 of the
10 motion picture entitled "The al Qaeda Plan" be presented to the
11 members.

12 MJ [CAPT ALLRED]: Very well.

13 **[Part 3 of video was shown at 2:32:30.]**

14 **[The video was stopped at 2:39:40.]**

15 CTC [MR. TRIVETT]: I'd like to now show the witness what has
16 been marked as the next prosecution exhibit identification in order.
17 I ask that the judge look at it first; with his permission.

18 MJ [CAPT ALLRED]: Show that to the witness.

19 How is this marked?

20 CTC [MR. TRIVETT]: It's marked as the next prosecution exhibit
21 number in order. There's a government exhibit sticker up in the
22 right-hand corner of *United States versus Usama bin Laden, et al.*, as
23 an ID in this trial of this case. It's marked as our next----

1 MJ [CAPT ALLRED]: What is the number on it? **[The military**
2 **judge viewed the exhibit]**. One twenty three--Prosecution Exhibit 123
3 for identification.

4 Can you see that, Mr. Kohlmann?

5 WIT [MR. KOHLMANN]: Yes.

6 Q [MR. TRIVETT]: Mr. Kohlmann, do you recognize the document
7 that's now present on your screen?

8 A [MR. KOHLMANN]: Yes, I do.

9 Q [MR. TRIVETT]: What do you recognize that as?

10 A [MR. KOHLMANN]: This is a translation of a government exhibit
11 which was submitted in the case *United States v. Usama bin Laden*, et
12 al., which was litigated in the Southern District of New York in
13 2001.

14 Q [MR. TRIVETT]: And what do you know it as?

15 A [MR. KOHLMANN]: I know this to be a translation of Usama bin
16 Laden's 1996 declaration of jihad against the Americans who were
17 occupying the land of two holy places.

18 Q [MR. TRIVETT]: Is this the same declaration that you just
19 referenced in the movie?

20 A [MR. KOHLMANN]: It is.

21 CTC [MR. TRIVETT]: The government would move this into evidence
22 as the next government exhibit.

23 CDC [MR. SWIFT]: Without objection.

1 MJ [CAPT ALLRED]: Very well. With no objection, Prosecution
2 Exhibit 123 is admitted. You may show it to the members.

3 Q [MR. TRIVETT]: I wanted to ask you a couple questions about
4 the specifics of this document. I'm not going to take you through
5 the whole document.

6 Can you just read the first line, please.

7 A [MR. KOHLMANN]: Yes. "Declaration of holy war against the
8 Americans who are occupying the land of the two holy places."

9 Q [MR. TRIVETT]: Again, the land of the two holy places is,
10 what?

11 A [MR. KOHLMANN]: In Arabic it's **[the witness spoke in Arabic.]**
12 It's referring to the Arabian Peninsula, specifically the western
13 Arabian Peninsula where you have the cities of Mecca and Medina,
14 which are where Islam was founded and where the holiest shrines of
15 Islam are located.

16 Q [MR. TRIVETT]: And what's another term for holy war?

17 A [MR. KOHLMANN]: Holy war in Arabic, in this context, would be
18 jihad.

19 Q [MR. TRIVETT]: Now, is there another definition of jihad?

20 A [MR. KOHLMANN]: It's also sometimes used in the sense of
21 internal spiritual struggle.

22 Q [MR. TRIVETT]: Does al Qaeda ever use it in that context?

23 A [MR. KOHLMANN]: No.

1 Q [MR. TRIVETT]: And the second one, please?

2 A [MR. KOHLMANN]: It expelled The Polytheists, out of the
3 Arabian Peninsula.

4 Q [MR. TRIVETT]: Now, who are they referring to when they say
5 "polytheist?"

6 A [MR. KOHLMANN]: Well, when they use polytheist here, they're
7 referring to anyone who is a non-Muslim, and specifically anyone who
8 is a non-Sunni Muslim, because in this case I believe they would also
9 count Shiite Muslims as polytheists.

10 Q [MR. TRIVETT]: And when they referenced the Arabian
11 Peninsula, is that--does that just include Saudi Arabia or does that
12 include other aspects?

13 A [MR. KOHLMANN]: Al Qaeda doesn't recognize the divisions, the
14 national divisions that are--the borders that are in the Arabian
15 Peninsula. When they refer to the Arabian Peninsula, they are
16 referring to the entire Arabian Peninsula, including Saudi Arabia,
17 Yemen, Kuwait, Qatar, et cetera, et cetera. Every single country
18 that is part of the Arabian Peninsula.

19 Q [MR. TRIVETT]: In your expert opinion, what was the
20 significance of this document as it involved al Qaeda and Usama bin
21 Laden?

22 A [MR. KOHLMANN]: Well, it was--number one; it was al Qaeda's
23 first official public declaration of war against the United States.

1 It specifically green-lighted the killing of American soldiers in the
2 Arabian Peninsula, and it called upon not just al Qaeda members,
3 Muslims everywhere that it was an obligatory duty upon them to carry
4 out operations which would indeed expel the polytheists, expel
5 Americans, expel other non-Muslims out of the land of the Arabian
6 Peninsula by any means necessary.

7 Q [MR. TRIVETT]: Now, in our opinion, at this time, is al
8 Qaeda, as an organization, strong enough to start conducting these
9 attacks on their own?

10 A [MR. KOHLMANN]: In August of 1996?

11 Q [MR. TRIVETT]: Yes.

12 A [MR. KOHLMANN]: Yeah.

13 Q [MR. TRIVETT]: Now, when they continue to reference
14 Palestine, as was referenced in the declaration and in the movie,
15 what specifically is their position in regard to American's
16 responsibility for what's going on in Palestine?

17 A [MR. KOHLMANN]: Well, in Jerusalem there is a mosque known as
18 the Al-Aqsa Mosque. And this is another--really another major holy
19 place in the religion of Islam. Among al Qaeda and al Qaeda
20 supporters and those who supported jihad, there was the idea that
21 America was responsible for the Israeli occupation of Jerusalem and
22 of the al-Aqsa Mosque. So not only were the U.S. forces responsible
23 for occupying the Arabian Peninsula, which had, again, Mecca and

1 Medina and the shrines there, but the U.S. was tangentially
2 responsible also for the occupation of the third holy shrine in
3 Islam, the al-Aqsa Mosque in al-Quds, in Jerusalem.

4 CTC [MR. TRIVETT]: Now, I'd like to show the witness what has
5 been marked as the next prosecution exhibit number in order. First
6 to the military judge, and then with his permission----

7 MJ [CAPT ALLRED]: You may show that to the witness, 124.

8 CTC [MR. TRIVETT]: And, excuse me, Your Honor. This is
9 actually a demonstrative aid. This does not go back with the
10 members, so it need not be marked. My apologies.

11 Q [MR. TRIVETT]: Are you able to see that section?

12 A [MR. KOHLMANN]: Yes, I am.

13 Q [MR. TRIVETT]: Is this part of the declaration of war that
14 you just referenced?

15 A [MR. KOHLMANN]: Yes, it is.

16 Q [MR. TRIVETT]: Can you now describe the line that starts out
17 "Each should help with one's own means and ability"?

18 A [MR. KOHLMANN]: Yes. That essentially means, again, it's
19 calling upon all the Muslims to act by using any means necessary in
20 order to expel non-Muslims and the infidels out of the Arabian
21 Peninsula and to attack the enemies of Islam, namely, in this
22 paragraph, the Israelis and the Americans.

23

1 Q [MR. TRIVETT]: So when Usama bin Laden issues a call out to
2 his Muslim brethren all over the world, is he just asking for
3 fighters?

4 A [MR. KOHLMANN]: He's calling upon anyone to do anything that
5 they can to support al Qaeda. Al Qaeda is a military organization,
6 but in order for al Qaeda to carry out military operations, it needs
7 a fairly substantial support structure.

8 Al Qaeda rests upon a wide network of individuals providing
9 logistical support, everything from financing, food, drivers,
10 security, pilots; whatever is necessary in order to carry out these
11 organizations. But, again, it goes far beyond just suicide bombers
12 and it goes far beyond individuals with guns. It involves really,
13 again, a substantial network of individuals carrying out a variety of
14 different tasks.

15 Q [MR. TRIVETT]: With the ultimate purpose of, what?

16 A [MR. KOHLMANN]: Well, again, al Qaeda is a military
17 organization. The purpose of al Qaeda is jihad. Everything that
18 anyone does within al Qaeda, no matter what they're doing, ultimately
19 the purpose is in support of jihad, it's in support of al Qaeda's
20 military operations. That's--that's the purpose of al Qaeda.

21 CTC [MR. TRIVETT]: I would now like to show the witness what
22 should be a map. I'll first show it to the Military Judge and, with
23 his permission, to the witness.

1 MJ [CAPT ALLRED]: You may show that to the witness. Is this
2 going to be marked as a----

3 CTC [MR. TRIVETT]: This I would like to be marked as a
4 prosecution exhibit, sir.

5 MJ [CAPT ALLRED]: Okay. This will be Number 124.

6 Q [MR. TRIVETT]: Do you recognize the image on your screen?

7 A [MR. KOHLMANN]: Yes, I do.

8 Q [MR. TRIVETT]: What do you recognize it as?

9 A [MR. KOHLMANN]: This is a map of Afghanistan and surrounding
10 countries.

11 Q [MR. TRIVETT]: Are you familiar with a Jihad Movement that
12 occurred in Tajikistan in the 1990s?

13 A [MR. KOHLMANN]: Yes, I am.

14 Q [MR. TRIVETT]: Does Tajikistan, in fact, border Afghanistan?

15 A [MR. KOHLMANN]: Yes, it borders the--roughly the northeast
16 quadrant of Afghanistan.

17 Q [MR. TRIVETT]: Now, although this document is not yet shown
18 to the members, I would ask if you could trace the border of the
19 Tajikistan and Afghanistan with your finger.

20 A [MR. KOHLMANN]: Sure.

21 MJ [CAPT ALLRED]: Wait. Wait a minute. Do you have any
22 objection to this exhibit?

23 CDC [MR. SWIFT]: No, we don't.

1 MJ [CAPT ALLRED]: All right. Prosecution Exhibit 124 is
2 admitted into evidence. Show it to the members, please, and the
3 gallery. Now we can have him trace it.

4 CTC [MR. TRIVETT]: I would ask that the court reporter capture
5 that as a subset evidence.

6 Q [MR. TRIVETT]: Now, did anything geographically separate the
7 two countries?

8 A [MR. KOHLMANN]: Yes. Afghanistan, Tajikistan are separated
9 by rivers and by the Pamir mountain range, which is actually one of
10 the largest mountain ranges in the world.

11 Q [MR. TRIVETT]: Now, are you aware if that border is actually
12 difficult to cross in the wintertime?

13 A [MR. KOHLMANN]: It's exceptionally difficult to cross, I
14 think, at all times of the year.

15 Q [MR. TRIVETT]: And please just very briefly describe the
16 nature of the jihad in Tajikistan in the 1990s.

17 A [MR. KOHLMANN]: Yes. Following the collapse of the Soviet
18 Union in 1991, all the Central Asian republics--Uzbekistan,
19 Kyrgyzstan, Tajikistan--became their own separate countries. The
20 government which took in Tajikistan, in the capital Dushanbe, was a
21 former communist government.

1 Soon after, an Islamic movement emerged to challenge the
2 rule of that government. The Islamic movement went by the name the
3 "The Renaissance Party" or "Hezbe Nahda."

4 MJ [CAPT ALLRED]: Could you spell that for the record, please?

5 WIT [MR. KOHLMANN]: Yes. H-e-z-b-e-n-a-h-d-a. For foreign
6 Islamists, for foreign supporters of jihad, particularly those who
7 had fought in Afghanistan, they looked upon Tajikistan as the
8 possible continuation or a continuation of the jihad that occurred
9 in--that occurred in Afghanistan, and they viewed this as a
10 legitimate jihad fitting, again, mujahideen force against a communist
11 government.

12 Q [MR. TRIVETT]: Would you say in many ways, then, the jihad in
13 Tajikistan was similar to that in Afghanistan during the
14 Soviet-Afghan war?

15 A [MR. KOHLMANN]: It was much--it was much smaller but it was
16 significant in many--in many ways. It had many characteristics of
17 it.

18 Q [MR. TRIVETT]: Would the mujahideen attempt to travel there
19 to assist their fellow Muslims?

20 A [MR. KOHLMANN]: They did.

21 Q [MR. TRIVETT]: Primarily what purpose would they travel to
22 there for?

23 A [MR. KOHLMANN]: The purpose was in order to fight the

1 communist forces there, in order to provide support for Hezbe-Nahda,
2 in order to get frontline training and combat experience because of
3 the fact that combat in Afghanistan at this point had devolved into
4 Muslims fighting other Muslims; whereas in Tajikistan it was more of
5 a clear dichotomy where you had atheists fighting against mujahideen.
6 It was more of an attractive way of getting combat experience and
7 participating in what was seen as a legitimate jihad.

8 CTC [MR. TRIVETT]: At this time I would ask that the exhibit be
9 taken down and that Part 4 of the movie be played.

10 MJ [CAPT ALLRED]: Very well.

11 **[Part 4 of video was played at 2:51:35.]**

12 **[The video was stopped at 2:58:58.]**

13 Q [MR. TRIVETT]: Mr. Kohlmann, did you see al Qaeda training on
14 an SA-7 missile system?

15 A [MR. KOHLMANN]: We did.

16 Q [MR. TRIVETT]: And that was the al Farouq camp?

17 A [MR. KOHLMANN]: That was at the al Farouq camp.

18 Q [MR. TRIVETT]: In your opinion, that was an al Qaeda camp?

19 A [MR. KOHLMANN]: That was one of the largest. It was actually
20 referred to as the master al Qaeda camp.

21 Q [MR. TRIVETT]: Now, on November 24th, 2001, was this camp
22 still operational?

23 A [MR. KOHLMANN]: I'm sorry, what was the date?

1 Q [MR. TRIVETT]: On November 24th, 2001, were trainees still
2 actively going through----

3 A [MR. KOHLMANN]: No, they weren't.

4 Q [MR. TRIVETT]: And why is that?

5 A [MR. KOHLMANN]: Because the camp was bombed by U.S. aircraft,
6 I believe.

7 Q [MR. TRIVETT]: Now, what were the primary uses that al Qaeda
8 had for SA-7 missiles?

9 A [MR. KOHLMANN]: The primary uses that al Qaeda had for SA-7
10 missiles were, number one, to serve as instruments in terrorist
11 attacks, to fire at civilian helicopters and civilian aircraft; and,
12 number two, a number of al Qaeda leaders had used these weapons for
13 its protection. In other words, individuals, high-ranking al Qaeda
14 members surrounded themselves with security guards carrying SA-7
15 missiles or other surface-to-air missile launchers, shoulder-fired
16 surface-to-air missile launchers with the--the obvious--the
17 inclination being--or, excuse me, the suggestion being that al Qaeda
18 is afraid of an airborne attack, some kind of attack by aircraft, and
19 these missiles would provide useful deterrent.

20 Q [MR. TRIVETT]: Do you know if the SA-7 missile system was
21 used predominantly by Taliban forces?

22 A [MR. KOHLMANN]: No, it wasn't.

23

1 Q [MR. TRIVETT]: And why is that?

2 A [MR. KOHLMANN]: Because the enemies of the Taliban largely
3 had no air power of their own. The Northern Alliance had
4 approximately one helicopter in their entire arsenal, which they used
5 primarily to shuttle high-ranking personnel in and out of
6 Afghanistan. They had no aircraft. They had no Air Force.

7 The war between the Taliban and their opponents was very
8 much a World War I style conflict. It did not have any airpower
9 component involved.

10 Q [MR. TRIVETT]: Now, when Usama bin Laden, would he drive to
11 the camps and give lectures to the trainees?

12 A [MR. KOHLMANN]: Yes.

13 Q [MR. TRIVETT]: And who would typically be in the audience at
14 that time?

15 A [MR. KOHLMANN]: It would be a variety of recruits and
16 commanders at the camp. The people that were at the camp would shift
17 over time. The training camp seminars would last approximately 30 to
18 45 days. So you would have a shifting of personnel in and out, you
19 would see new recruits, new commanders, but those would be the people
20 in attendance.

21 Q [MR. TRIVETT]: Are you aware of how often Usama bin Laden
22 would go and give lectures to these trainees?

23 A [MR. KOHLMANN]: Very frequently. He would eat meals with the

1 recruits, he would lecture to them. He--this was--he was--in fact,
2 he showed up there so often that eventually this camp became known by
3 a nickname, the Camp of the Sheikh, or the Camp of Usama bin Laden.

4 Q [MR. TRIVETT]: Would he make notes to these trainees of al
5 Qaeda's intentions toward America and Israel?

6 A [MR. KOHLMANN]: Yes. As shown in the video, Bin Laden when
7 he visited al Farouq Camp, would frequently give speeches about the
8 necessity for suicide operations and other military operations
9 targeting the United States, its allies, and other nations around the
10 world that it believed to be part of al Qaeda's enemies, but most
11 prominently the United States. The constant theme was attacking the
12 United States.

13 Q [MR. TRIVETT]: Was the indoctrination of these trainees into
14 al Qaeda's intentions towards the United States part of the actual
15 training program?

16 A [MR. KOHLMANN]: Yes. Al Qaeda believed it was very, very
17 important not just to school people in military tactics, because
18 their argument was if we just teach these people how to shoot a gun,
19 there's a good likelihood that eventually they'll turn around and
20 start shooting at us. So we have to not only instruct them on the
21 military tactics, we also have to give them a philosophical and
22 ideological basis in which to move forward. We need to indoctrinate
23 them in our ideas and make sure that they are fully committed to the

1 cause for which we're providing military training, so that ultimately
2 they will execute suicide operations and other operations as part of
3 our campaign.

4 Q [MR. TRIVETT]: In our opinion, is it possible for someone who
5 is standing right next to Usama bin Laden at many of these lectures
6 to not know al Qaeda's intention to attack the United States in
7 terrorist attacks?

8 A [MR. KOHLMANN]: I don't think that's possible, no.

9 CTC [MR. TRIVETT]: I'd like to show the Military Judge and,
10 with permission, to the witness the next prosecution exhibit number
11 in order.

12 MJ [CAPT ALLRED]: Very well. You may show that.

13 Q [MR. TRIVETT]: Mr. Kohlmann, do you recognize the individual
14 on the screen?

15 A [MR. KOHLMANN]: Yes.

16 Q [MR. TRIVETT]: And who do you recognize him to be?

17 A [MR. KOHLMANN]: This is the one-time military Emir or
18 military commander of al Qaeda known as Abu Ubaida al-Banshiri.

19 CTC [MR. TRIVETT]: Prosecution would like to move this into
20 evidence as the next exhibit and have it shown to the members.

21 CDC [MR. SWIFT]: No objection, Your Honor.

22 MJ [CAPT ALLRED]: Okay. No objection. Prosecution Exhibit 125
23 will be admitted and shown to the members and the gallery.

1 Q [MR. TRIVETT]: Now, did we see this individual earlier in
2 "The al Qaeda Plan"?

3 A [MR. KOHLMANN]: Yes, we did.

4 Q [MR. TRIVETT]: And is this individual currently alive or
5 dead?

6 A [MR. KOHLMANN]: He's currently dead.

7 Q [MR. TRIVETT]: I guess once you're dead, you remain dead.

8 A [MR. KOHLMANN]: He's permanently dead, yes.

9 CDC [MR. SWIFT]: We'd agree that once you're dead, you're dead.

10 Q [MR. TRIVETT]: To your knowledge, did al Qaeda do anything to
11 memorialize his death?

12 A [MR. KOHLMANN]: Yes. In addition to issuing a eulogy in his
13 honor, they also nicknamed one of their terrorist training camps in
14 honor--in honor of him and honoring his legacy, in honor of the role
15 he played in helping found al Qaeda and create al Qaeda's initial
16 purpose.

17 Q [MR. TRIVETT]: And what camp was that?

18 A [MR. KOHLMANN]: That was the Abu Obaidah camp, otherwise
19 known as the Tarnak Farms.

20 Q [MR. TRIVETT]: And Tarnak Farms is one of the camps you
21 described?

22 A [MR. KOHLMANN]: Yes.

23

1 Q [MR. TRIVETT]: So if someone would be referencing Abu Obaidah
2 camp, or Tarnak Farm camp, they're talking about the same training
3 camp?

4 A [MR. KOHLMANN]: That is synonymous terminology, yeah.

5 Q [MR. TRIVETT]: And that's an al Qaeda camp?

6 A [MR. KOHLMANN]: That's correct, yes. It's actually--it's
7 actually an al Qaeda leadership camp and a training camp. It was--
8 there were a number of senior al Qaeda leaders who--who resided
9 there.

10 CTC [MR. TRIVETT]: With the Commission's permission, we'd like
11 to play Part 5 of the movie.

12 MJ [CAPT ALLRED]: Very well.

13 **[Part 5 of video was played at 3:05:49.]**

14 **[The video was stopped at 3:14:52.]**

15 CTC [MR. TRIVETT]: If we could have the next prosecution
16 exhibit number in order shown to the Military Judge and, with his
17 permission, to Mr. Kohlmann?

18 MJ [CAPT ALLRED]: You may show that to the witness. This will
19 be number 126.

20 Q [MR. TRIVETT]: Mr. Kohlmann, do you recognize the document on
21 your screen?

22 A [MR. KOHLMANN]: Yes, I do.

23

1 Q [MR. TRIVETT]: What do you recognize that as?

2 A [MR. KOHLMANN]: This is the fatwa issued by the World Islamic
3 Front for Jihad Against Jews and Crusaders, otherwise known as the
4 International Islamic Front for Jihad Against the Jews and Crusaders.
5 This is actually a translation of a government exhibit which was
6 submitted in the case *United States v. Usama bin Laden, et al.*, in
7 the Southern District of New York in 2001.

8 Q [MR. TRIVETT]: Now, how does this document differ primarily
9 from the 1996 declaration of war by Usama bin Laden?

10 A [MR. KOHLMANN]: This was an escalation. This was expanding
11 the ruling of the fatwa which had initially been issued in August of
12 1996, which applied to American soldiers in the Arabian Peninsula,
13 taking that and then expanding it saying the fatwa about killing
14 Americans now applies not just to American soldiers but to American
15 civilians and soldiers alike anywhere in the world. In other words,
16 making the conflict, making the war against the United States a
17 global one with no restrictions.

18 Q [MR. TRIVETT]: Anywhere within this document does it justify
19 the killing of civilians?

20 A [MR. KOHLMANN]: Yes, it does.

21 Q [MR. TRIVETT]: And what's--what is al Qaeda's justification
22 for targeting American civilians in that war?

23 A [MR. KOHLMANN]: The logic of al Qaeda is that the American

1 government is elected by American taxpayers, which are American
2 civilians, and that it is American taxpayer dollars which fund
3 America's foreign policy. Thus, it is not just American soldiers who
4 are responsible, it's not just the American government which is
5 responsible for these policies, it is also Americans on an individual
6 basis because of the fact that they elect the leadership of the
7 United States and they pay taxes to the leadership and the government
8 of the United States. Thus, they are funding and otherwise
9 supporting this conflict and thus they are legitimate targets just as
10 much as anyone else.

11 Q [MR. TRIVETT]: How well publicized was the 1998 fatwa?

12 A [MR. KOHLMANN]: It was extremely well publicized.

13 Q [MR. TRIVETT]: And I don't think I asked you this but I
14 should have asked you this, how well publicized was the 1996
15 declaration of war?

16 A [MR. KOHLMANN]: The 1996 declaration was very widely
17 publicized. It was printed widely. It was talked about in Arabic
18 newspapers. It was distributed on the Internet.

19 '98 fatwa, though, really got tremendous headlines. It
20 was--I mean, you could actually see one of the newspaper articles in
21 al Quds al-Arabi in which it appeared. It was front-page news in the
22 Arab world, it was front-page news in the Western world. It was

1 distributed on the Internet in Arabic, in English and other
2 languages. It was--again, it was front-page news.

3 Q [MR. TRIVETT]: In your opinion, how likely was it that most
4 of the people in and around Usama bin Laden knew about both the '96
5 declaration of war against America and the '98 fatwa that made
6 American civilians legitimate targets in their war?

7 A [MR. KOHLMANN]: Given Mr. Bin Laden's propensity for
8 frequently declaring his intentions against the United States, given
9 the fact how widely these documents were publicized, the fact that
10 they were public and they were available to anyone, I find it very
11 difficult to believe that anyone involved with al Qaeda or associated
12 with Usama bin Laden would have been unfamiliar with either of these
13 documents.

14 Q [MR. TRIVETT]: Now, the movie stated that Mr. Wadi al-Haj was
15 a press secretary for Usama bin Laden yet was also convicted of his
16 involvement in the '98 embassy bombings.

17 A [MR. KOHLMANN]: He was actually Mr. Bin Laden's personal
18 secretary, but, yes, he was convicted in the '98 embassy bombings.

19 Q [MR. TRIVETT]: Is that an example of the nonhierarchical
20 nature of al Qaeda?

21 A [MR. KOHLMANN]: Yes. Mr. al-Haj, in addition to serving as
22 Bin Laden's personal secretary, also provided direct support for the
23 cell in Nairobi, Kenya, which ultimately carried out the 1998 embassy

1 bombings. He traveled throughout Africa and in Kenya providing
2 assistance to that cell under the cover of being a humanitarian
3 worker.

4 Q [MR. TRIVETT]: So in your opinion, were—did the al Qaeda
5 members feel bound by this fatwa?

6 A [MR. KOHLMANN]: Yes, they did.

7 Q [MR. TRIVETT]: And can you explain why they might feel
8 obligated to follow it?

9 A [MR. KOHLMANN]: Because of the fact that if you joined al
10 Qaeda and you swore an oath of loyalty to Usama bin Laden, then,
11 again, if Usama bin Laden issued a fatwa, or religious edict, you
12 were bound by that edict. And if you don't follow that fatwa, then
13 you aren't following Usama bin Laden, and then you wouldn't be
14 considered a member or supporter of al Qaeda anymore.

15 Al Qaeda puts a tremendous value on personal loyalty. And
16 those who would not follow this fatwa would have been cast out of the
17 organization.

18 CTC [MR. TRIVETT]: At this time we would ask that that document
19 be moved into evidence.

20 CDC [MR. SWIFT]: Without objection.

21 MJ [CAPT ALLRED]: Very well. Prosecution Exhibit 126 is
22 admitted without objection.

23

1 Q [MR. TRIVETT]: Now, you just mentioned the term "bayat." If
2 one were to give bayat to Usama bin Laden and Usama bin Laden
3 declares war against America, specifically civilians, would those who
4 have given bayat been obligated to follow the fatwa?

5 A [MR. KOHLMANN]: Yes, absolutely.

6 Q [MR. TRIVETT]: Did you hear any of the testimony this week
7 from Special Agent [REDACTED]?

8 A [MR. KOHLMANN]: Yes, I did.

9 Q [MR. TRIVETT]: Regarding the difficulty of members admitting
10 to their captors that they swore--swore bayat for Usama bin Laden?

11 A [MR. KOHLMANN]: Yes, I did.

12 Q [MR. TRIVETT]: Did you agree with that statement?

13 A [MR. KOHLMANN]: Definitely, yes.

14 Q [MR. TRIVETT]: And why?

15 A [MR. KOHLMANN]: Because of the fact that if you acknowledge
16 that you swore bayat or an oath of loyalty to Usama bin Laden, along
17 with that you acknowledge essentially, inherently, inherent intent,
18 to carry out acts of violence, striking the United States and its
19 allies. And so it's very difficult to acknowledge one without
20 acknowledging the other, and that's something that captured al Qaeda
21 members are very reticent to do.

1 Q [MR. TRIVETT]: I want to change directions a little bit and I
2 want to now talk to you specifically about the importance of the
3 security of Usama bin Laden specifically from 1996 to 1998. What
4 kind of threats did Usama bin Laden experience between the period
5 1996 and 1998?

6 A [MR. KOHLMANN]: There were a myriad of threats which Usama
7 bin Laden faced. First of all, he faced threats from governments
8 such as Egypt and Saudi Arabia. Mr. bin Laden at that point was
9 funding the Egyptian Islamic Jihad Movement. He was helping provide
10 it a safe haven. The Egyptian Islamic Jihad Movement was one of the
11 most serious threats to the stability of Egypt, and the Egyptian
12 government was putting a tremendous amount of effort to try to
13 contain this movement. It accused bin Laden as a direct threat to
14 the security and stability of Egypt.

15 Likewise, in Saudi Arabia, the Saudis viewed Mr. bin Laden
16 as a major threat both to internal stability in Saudi Arabia and also
17 a major terrorist threat. Both these regimes were seeking to either
18 contain, capture, or kill Mr. bin Laden.

19 At that point there were also other governments, such as
20 the United States and others, which were, again, deliberately seeking
21 to capture or otherwise incapacitate Mr. bin Laden.

22 In 1996, when he was still in the Sudan, Khartoum at that
23 point has been described as being something like a Casablanca of the

1 1990s, in terms of such a wide variety of terrorist organizations and
2 intelligence agents that it really was both a very dynamic place and
3 also a very dangerous place because it was such a focus of activity
4 not just for al Qaeda and similar terrorist organizations but also--
5 also intelligence organizations. Finally----

6 Q [MR. TRIVETT]: ----I'll just have you stop for a second just
7 to wait for the translator.

8 A [MR. KOHLMANN]: I apologize.

9 Q [MR. TRIVETT]: Okay. Please continue.

10 A [MR. KOHLMANN]: Mr. Bin Laden also faced actual threats from
11 within the jihadi movement itself. In approximately 1995, a member
12 of the group known as "Takfir Wal-Hijra," which means excommunication
13 and flight, which is a jihadi movement, became convinced that Bin
14 Laden was a heretic, was an apostate and that he should be killed.
15 This individual took an assault rifle and, first of all, was planning
16 on assassinating Bin Laden and then shooting up a local mosque in
17 Khartoum, Sudan, the Ansar AL-Sunna mosque, which was filled at that
18 time with associates and adherents of Mr. bin Laden.

19 The only reason that the plot failed was because this
20 individual chose to attack the mosque first, in which he killed
21 numerous individuals inside of the mosque and was stopped before he
22 could reach bin Laden.

1 So I--this type of threat was very dangerous because this
2 person looked like, sounded like and otherwise appeared to be exactly
3 similar to many of the individuals who were being recruited and were
4 being indoctrinated into al Qaeda.

5 So this kind of threat was almost like a stealth threat.
6 It was very difficult to anticipate, and it made Mr. bin Laden and
7 his associates extremely nervous.

8 Q [MR. TRIVETT]: So by 1998, can you list all the countries
9 specifically that either wanted to kill or capture Usama bin Laden.

10 A [MR. KOHLMANN]: I don't even know if I could give you a full
11 list, but I can give you a partial list. Saudi Arabia, Egypt,
12 Algeria, France, the United States, the United Kingdom. The list--
13 it's a long list.

14 Q [MR. TRIVETT]: In fact, had any senior al Qaeda Shura
15 members--Shura Council members been captured by the United States in
16 the wake of the embassy bombings?

17 A [MR. KOHLMANN]: Yes.

18 Q [MR. TRIVETT]: And, specifically, who was impacted?

19 A [MR. KOHLMANN]: Well, aside from Mr. bin Laden's personal
20 secretary Wadi al-Haj, U.S. authorities were also able to capture
21 Mamdouh Mahmud Salim, otherwise known as Abu Hajar al-Iraqi, one of
22 the founding members of al Qaeda, one of the members of al Qaeda's

1 Shura council. And, actually, Abu Hajar was the initial person
2 selected to lead al Qaeda for a short time back in 1988.

3 Q [MR. TRIVETT]: So specifically between the years of 1996 and
4 1998, how important was Usama bin Laden to the continued existence of
5 al Qaeda?

6 A [MR. KOHLMANN]: He was absolutely essential.

7 Q [MR. TRIVETT]: Please explain why.

8 A [MR. KOHLMANN]: Before Mr. bin Laden came along, you had
9 separate organizations such as the Egyptian Islamic Jihad
10 organization, such as the Armed Islamic group in Algeria, such as
11 Jamaat al-Islamiya in Egypt. These groups all had their separate
12 goals. They all had their separate agendas, their separate finances,
13 their separate military arms. And very frequently these
14 organizations found it very difficult to cooperate with each other.

15 The people that led these organizations were often very
16 power hungry. They weren't necessarily willing to share evenly. And
17 they all had ambitions that sometimes clashed with each other. They
18 couldn't agree on who to put in charge.

19 And, thus, when Mr. bin Laden came along in the late '80s
20 and early '90s, this was someone who they could all agree was the
21 appropriate leader for a unification front for those different
22 groups. The reason being that Mr. bin Laden had some financial

1 resources which he was willing to share with these organizations, not
2 necessarily evenly, but he was willing to share them.

3 He was willing to use his political influence and his--his
4 benefactors in order to help to provide safe haven for these
5 different organizations and to protect them, to shelter them. And he
6 was someone who had a great personal appeal. Whereas someone like
7 Dr. Ayman Zawahiri, the leader of the Egyptian Islamic Jihad
8 Movement, is somewhat unpopular in certain circles and comes off as
9 being very arrogant and very egotistical. And he's not really an
10 appropriate person that you want as a political leader for al Qaeda.

11 Whereas bin Laden had a much popular appeal to him and he
12 was someone who was able to keep these groups together despite the
13 tendency towards in fighting, and, thus, avoiding what happened with
14 the Afghan mujahideen in the late 1980s, where you initially had this
15 Islamic community of Afghan mujahideen and then all of a sudden these
16 groups just started fighting with each other.

17 Q [MR. TRIVETT]: Specifically, was al Qaeda comprised of
18 Egyptians?

19 A [MR. KOHLMANN]: Yes.

20 Q [MR. TRIVETT]: Yemenis?

21 A [MR. KOHLMANN]: Yes.

22 Q [MR. TRIVETT]: Saudis?

23 A [MR. KOHLMANN]: Yes.

1 Q [MR. TRIVETT]: Sudanese?

2 A [MR. KOHLMANN]: Yes.

3 Q [MR. TRIVETT]: Within al Qaeda itself, did these groups
4 always get along?

5 A [MR. KOHLMANN]: No.

6 Q [MR. TRIVETT]: How is it, then, al Qaeda was able to
7 function?

8 A [MR. KOHLMANN]: Al Qaeda was able to function with bin Laden
9 serving as the unifier. Bin Laden was the trunk of the tree. He was
10 able to bring these different groups together and able to convince
11 them that what they should be focusing on is not their petty
12 disagreements about strategy and about this or that, about financing.
13 What they should be doing is cooperating against their true enemy,
14 the United States and Israel.

15 Q [MR. TRIVETT]: Now, in your opinion, had Usama bin Laden been
16 either killed or captured in 1996 or 1997, is it possible that the
17 embassy bombings they ever take place?

18 A [MR. KOHLMANN]: I--they probably would not have occurred the
19 way that they did. The idea of executing coordinated simultaneous
20 attacks in multiple different countries, this is a hallmark of al
21 Qaeda, and the reason is because in order to carry out this kind of
22 attack, it requires resources. It requires a network, a trained

1 national network of individuals in multiple countries with multiple
2 nationalities with multiple backgrounds.

3 This was something that an individual organization might
4 have a cell here or a cell here or a cell here, but in order to bring
5 these cells together, in order to make them as one body, in order to
6 make them function as one organization, it absolutely required
7 Mr. bin Laden.

8 If bin Laden had been killed or captured, it is extremely
9 likely that these cells would have separated off from each other and
10 gone their own way. So certainly there could have been one bombing.
11 There could have been maybe two. But the idea of a continuous string
12 of attacks, very unlikely.

13 Q [MR. TRIVETT]: Is it possible if he had been killed or
14 captured prior to the USS COLE attack, that the USS COLE attack would
15 not have happened?

16 A [MR. KOHLMANN]: Again, for the same reasons, the USS COLE
17 attack involved a very sophisticated transnational network of
18 individuals, in multiple countries, with fairly substantial
19 resources. I don't believe that you could have carried out that kind
20 of a coordinated attack without Mr. bin Laden serving, again, as the
21 trunk of the tree, the unifying branch to connect all the other
22 branches together and bring them into a network that could function

1 as one rather than separately and at times in conflict with each
2 other.

3 Q [MR. TRIVETT]: And for the same reason that you just gave, is
4 it also possible that the 9/11 attacks on the Pentagon, the World
5 Trade Center, and Flight 93 would have never occurred if Usama bin
6 Laden had been killed or captured prior to the attacks?

7 A [MR. KOHLMANN]: It would have been nearly impossible, not to
8 mention that the majority of the operatives involved in the 9/11
9 attacks were Saudi nationals, and Saudi nationals gave their
10 allegiance to Usama bin Laden personally. And those--and I should
11 say not just Saudis but those from the Arabian Peninsula. There--
12 before Mr. bin Laden came along, there was no terrorist organization
13 really in the Arabian Peninsula. Mr. bin Laden created that. And,
14 thus, fighters from the Arabian Peninsula owe him a very, very
15 specific sense of loyalty, a sense of loyalty that they would have
16 never given to someone like Dr. Ayman Zawahiri, who is an Egyptian,
17 or Abu Hajar al-Iraqi, or Mamdouh Muhamed Salim, who is an Iraqi.

18 They needed someone who was from their own background,
19 someone that they could associate with.

20 Q [MR. TRIVETT]: I'm going to switch directions slightly now.
21 From 1996, when the accused were in al Qaeda, to 2001, when he was
22 captured, what was the primary purpose of al Qaeda?

23 A [MR. KOHLMANN]: The primary purpose of al Qaeda was to launch

1 terrorist attacks or jihadi operations against the United States, its
2 allies, and anyone else who stood in the way of al Qaeda's main goal:
3 jihad, holy war.

4 Q [MR. TRIVETT]: And was the military committee primarily
5 responsible for plotting and directing those attacks?

6 A [MR. KOHLMANN]: The military committee and also to some
7 extent others, such as Khalid Sheikh Mohammad or al Mukhtar.

8 Q [MR. TRIVETT]: Now, the other committees, whether it be the
9 finance committee, the media committee, political committee, what's
10 their primary purpose?

11 A [MR. KOHLMANN]: Well, again, al Qaeda is a military
12 organization. The purpose of al Qaeda is to launch military attacks
13 on its enemies. Thus, if you're not part of the military committee,
14 you're part of the financial committee or the media committee. Your
15 purpose is to provide logistical support for the military operations
16 of al Qaeda. Your purpose is to provide key logistical support.
17 Because, again, military operations cannot happen in a vacuum. They
18 require financing. They require propaganda. They require a wide
19 network of individuals willing to support this network, willing to
20 fund this network. Again, it's--it's imagining a tree growing with
21 the branches without a trunk. They need that logistical support, and
22 everything is being channeled to the purpose, again, of military
23 operations.

1 Q [MR. TRIVETT]: Moving now specifically to the security
2 committee. Would you agree that the----

3 MJ [CAPT ALLRED]: Before we do that.

4 CTC [MR. TRIVETT]: Yes, sir?

5 MJ [CAPT ALLRED]: We've been on the record for an hour and a
6 half. I think this might be a good time to take a recess, if you're
7 between thoughts.

8 CTC [MR. TRIVETT]: Yes, sir, that's fine.

9 MJ [CAPT ALLRED]: Fair enough. Why don't we take 15 minutes?
10 In recess.

11 **[The military commission recessed at 1533, 28 July 2008.]**

12 **[The military commission came to order at 1550, 28 July 2008. All**
13 **parties present when the commission recessed were once again**
14 **present.]**

15 MJ [CAPT ALLRED]: Please be seated **[all did as directed]**.

16 **Questions by the civilian trial counsel:**

17 Q [MR. TRIVETT]: Mr. Kohlmann, we were just discussing the
18 security committee and its role within al Qaeda. Was the security
19 committee the committee primarily responsible for personal security
20 for Usama bin Laden?

21 A [MR. KOHLMANN]: Yes, it was.

22

23

1 Q [MR. TRIVETT]: What is the most important function, in your
2 opinion, that the security committee provides to Usama bin Laden in
3 the form of his security?

4 A [MR. KOHLMANN]: To protect his life at all costs.

5 Q [MR. TRIVETT]: And who was primarily responsible for that?

6 A [MR. KOHLMANN]: The head of the security committee.

7 Q [MR. TRIVETT]: Does the head of the security committee
8 actually protect Usama bin Laden or was that done by someone else?

9 A [MR. KOHLMANN]: No, he did not. That's done by others.

10 Q [MR. TRIVETT]: Who was it done by specifically?

11 A [MR. KOHLMANN]: It's done by the personal body guards of
12 Usama bin Laden.

13 Q [MR. TRIVETT]: Were you able to listen to Special Agent
14 [REDACTED]'s testimony in these proceedings?

15 A [MR. KOHLMANN]: Yes, I was.

16 Q [MR. TRIVETT]: I want to quickly quote something he said and
17 see if you agree with him.

18 A [MR. KOHLMANN]: Okay.

19 Q [MR. TRIVETT]: "Without people like Hamdan, bin Laden would
20 enjoy no support, enjoy no protection, and would probably have been
21 unable to elude capture." Would you agree with that?

22 A [MR. KOHLMANN]: Yes.

23

1 Q [MR. TRIVETT]: Why?

2 A [MR. KOHLMANN]: Usama bin Laden is and was one of the most
3 wanted men in the world. He had a myriad of different parties who
4 were seeking to either capture or kill him. With that kind of
5 tension on you, you have an absolute need for the best kind of
6 security you can have. And the best kind of security you can have
7 are personal bodyguards who are absolutely loyal to you. Bodyguards
8 who are willing to sacrifice their life, the lives of their families,
9 their wealth, every possession that they have in order to support one
10 goal, which is to guarantee the safety and security of Usama bin
11 Laden and to make sure that bin Laden does not fall within the hand
12 of hostile intelligence services or hostile law enforcement services.
13 bin Laden relied upon these people to make sure that that did not
14 happen.

15 Q [MR. TRIVETT]: In our opinion, what was the primary criteria
16 that the security committee would look for in deciding who should be
17 a bodyguard for Usama bin Laden?

18 A [MR. KOHLMANN]: Loyalty.

19 [END OF PAGE]

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23

1 Q [MR. TRIVETT]: Now, how could an individual in al Qaeda earn
2 the trust of Usama bin Laden so that Usama bin Laden or the security
3 committee was convinced that this was a loyal member of the
4 organization?

5 A [MR. KOHLMANN]: Well, I would say there would be two main
6 ways. The first way is that you've been with bin Laden since all the
7 way back in the day, back when, again, the crucible of al Qaeda was
8 formed back in the late '80s, and you've been around for such a long
9 time that bin Laden doesn't look upon you as a subordinate; looks
10 upon you as almost an equal, someone that could have been just like
11 him.

12 And so he looks upon these people as his brothers and
13 people that he relies upon, he has to trust these people. But Bin
14 Laden comes from a Bedouin background. He comes from an area--
15 originally his family comes from an area that's known as the
16 Hadramout, which is along the Yemeni-Saudi border.

17 Q [MR. TRIVETT]: If I could stop you there for one second.

18 A [MR. KOHLMANN]: Yes, of course.

19 Q [MR. TRIVETT]: When you say that his family comes from it----

20 A [MR. KOHLMANN]: Yeah.

21 Q [MR. TRIVETT]: ----was he raised in Yemen?

22 A [MR. KOHLMANN]: No, no, he was raised in Saudi Arabia.

1 Q [MR. TRIVETT]: Okay. So what do you mean exactly when you
2 say that his family comes from the Hadramout region of Yemen?

3 A [MR. KOHLMANN]: Bin Laden's father achieved I think a degree
4 of prominence, you'd say, with the Saudi government by helping them
5 with construction tasks and other major tasks by providing them with
6 financial assistance. And in that way, even though bin Laden's
7 family, his father, initially came from this Hadramout region of the
8 Yemeni-Saudi border, they are considered Saudis.

9 It's very difficult to work your way into Saudi--into Saudi
10 society unless you're actually Saudi. But the bin Ladens had,
11 because of their commitment to the Saudi state, because of their
12 contributions to the Saudi state, they were viewed specially.
13 However, Bin Laden's family, again, initially comes from the
14 Hadramout region, and in Bedouin culture, there's a--there's a
15 priority on the issue of tribal and family loyalty. You never go
16 against your tribe. You never go against your family. This is the
17 number one most important thing. No matter how much pressure is put
18 on you, no matter if your life is threatened, you never, ever, ever
19 transgress family and tribal--the binds. These are the most
20 important ones.

21 So as far as bin Laden was concerned, when he saw other
22 Bedouins, when he saw others who came from that same Bedouin culture,
23 he looked upon these people and he considered these people as loyal,

1 beyond loyal. Because of their tribal and family background, he felt
2 that they shared a special connection with him, and he felt these
3 people would never sell him out.

4 And because of the fact that they are not--in general, the
5 Hadramout is not a wealthy region. It's not a region where people
6 can be corrupted by wealth. It's a fairly simple place that they
7 could not be bribed to transgress him. They could not be bribed to
8 become assassins. They could not be pressured. They would be
9 absolutely loyal.

10 Q [MR. TRIVETT]: In your opinion, was it possible for someone
11 to have been a bodyguard for Usama bin Laden without pleading bayat?

12 A [MR. KOHLMANN]: No.

13 Q [MR. TRIVETT]: Are you aware of the ethnicity of a majority
14 of the bodyguards for Usama bin Laden between 1996 and 2001?

15 A [MR. KOHLMANN]: A large majority of them were Yemenis.

16 Q [MR. TRIVETT]: Just to be clear, there were also others?

17 A [MR. KOHLMANN]: Yeah, there were others, yes.

18 Q [MR. TRIVETT]: And the others would have earned their loyalty
19 typically how?

20 A [MR. KOHLMANN]: Again, individuals who had been with Bin
21 Laden and been with al Qaeda had been fighting with the Arab-Afghans
22 in jihad for such a long period of time that their credentials were
23 essentially unimpeachable. They were almost at the level of bin

1 Laden himself. So bin Laden, again, looked upon them almost as
2 equals.

3 Q [MR. TRIVETT]: Are you aware of any press conferences where
4 Usama bin Laden would actually meet with members of the media as
5 opposed to sending out messages to the media?

6 A [MR. KOHLMANN]: Yes.

7 Q [MR. TRIVETT]: How important was the job of bodyguards during
8 these press conferences?

9 A [MR. KOHLMANN]: They played an absolutely essential role.

10 Q [MR. TRIVETT]: Why?

11 A [MR. KOHLMANN]: Prior to al Qaeda finding a way of
12 distributing their propaganda via the Internet and other mechanisms,
13 the only way that al Qaeda could get video recordings or audio
14 recordings of leaders like bin Laden out to the general public was by
15 relying on mainstream press, not just Al Arabiya or Al Jazeera, but
16 also, again, agencies like ABC News, like CNN.

17 Now, while this was an essential task and essential
18 function for al Qaeda, it was a Catch-22, because it was also the
19 most vulnerable point for bin Laden.

20 Normally bin Laden surrounded himself with individuals who
21 were part of al Qaeda, who were fanatically loyal to him.
22 When these press conferences occurred, you had significant numbers of
23 individuals, including Americans, who were suddenly coming into the

1 personal space of bin Laden, bringing with them a host of electronic
2 equipment, cameras, and batteries.

3 Bin Laden and his associates were extremely concerned that
4 the United States government, among other governments, would use
5 these opportunities in order to try to determine Mr. bin Laden's
6 specific location in Afghanistan, and perhaps even to try to
7 assassinate him with equipment hidden inside of these cameras, inside
8 of these batteries.

9 In fact, the camera crews that traveled to these locations
10 were specifically threatened by their mujahideen escorts, saying to
11 them, if you do anything funny, if you give away Mr. bin Laden's
12 location, we'll kill you. We'll come after you. And it seems that
13 those that were given this warning took it very seriously.

14 Q [MR. TRIVETT]: Other than the security concerns that they
15 would have when members of the media would come close to Usama bin
16 Laden, would it have also been important to them for any other reason
17 to have a very forceful and professional presence at the conferences
18 in regard to the security of Usama bin Laden?

19 A [MR. KOHLMANN]: Yes, because when al Qaeda creates their own
20 video recordings, they can make themselves look as sophisticated and
21 professional as they want. But when you have mainstream media there,
22 its mainstream media that's doing the reporting, and its mainstream
23 media who is ultimately editing these reports when they are far, far

1 away from Afghanistan, where al Qaeda no longer has any control over
2 what they are publishing.

3 So it was very crucial for bin Laden and his associates the
4 entire time that these media representatives were there to put on a
5 very, very, sophisticated, very fearsome face, a face of individuals
6 who were heavily armed, who were firing weapons, who were chanting
7 slogans. Again, it was a show. It was very much a show for these
8 individuals and it was carefully choreographed.

9 Q [MR. TRIVETT]: And it was carefully choreographed and it was
10 a show for these individuals, was it also taken very seriously in
11 regard to the security that they needed to provide?

12 A [MR. KOHLMANN]: Yes. In addition to the threats faced by bin
13 Laden, they also wanted to communicate the idea that bin Laden was
14 protected by a cadre of individuals who would give up their lives and
15 were very eyes-up for any potential threats. They wanted Mr. bin
16 Laden to look just the way he was; very well protected. And so it
17 was very important to have these bodyguards around.

18 Q [MR. TRIVETT]: Let's switch gears a little bit. We're going
19 to talk about the East Africa embassy bombings.

20 CTC [MR. TRIVETT]: I'm going to ask that the next prosecution
21 exhibit in order be made available to the Military Judge and, with
22 his permission, to the witness.

23 MJ [CAPT ALLRED]: Please do.

1 Q [MR. TRIVETT]: Mr. Kohlmann, do you recognize the document
2 that's currently on your screen?

3 A [MR. KOHLMANN]: Yes, I do.

4 Q [MR. TRIVETT]: What do you recognize it as?

5 A [MR. KOHLMANN]: Well, this is actually a translation of a
6 government exhibit submitted, again, in the case *United States v.*
7 *Usama bin Laden, et al.*, in the Southern District of New York in
8 2001. Do you want me to explain what it was?

9 Q [MR. TRIVETT]: Not to go into any detail right this second.
10 I will be asking you in a second. But what I'll ask you to do, just
11 in general, what is it?

12 A [MR. KOHLMANN]: This is a claim of responsibility for the
13 1998 bombings of the U.S. embassies in East Africa. It was a
14 declaration, I believe it was faxed to media agencies on August 7th,
15 1998.

16 Q [MR. TRIVETT]: The same day of the bombing?

17 A [MR. KOHLMANN]: That's correct, yes.

18 CTC [MR. TRIVETT]: Sir, I would ask that the next government
19 exhibit in order be placed in evidence and moved for identification.

20 CDC [MR. SWIFT]: Without objection.

21 MJ [CAPT ALLRED]: Very well. This is number 127.

22

23

1 Q [MR. TRIVETT]: Now, if you could--other than the typical
2 Islamic greeting at the top, could you read the second line, please.

3 A [MR. KOHLMANN]: Yes. "The Islamic Army"----

4 CDC [MR. SWIFT]: Well, Your Honor, if it's been put into
5 evidence, I don't know if we need the witness now to read it.

6 MJ [CAPT ALLRED]: Show it to the members? Can they see it now?
7 Okay.

8 CTC [MR. TRIVETT]: I'm going to be asking very specific
9 questions, so I just want to give a reference point, so I wanted him
10 to read the second line.

11 MJ [CAPT ALLRED]: Okay. Overruled.

12 Q [MR. TRIVETT]: Could you please read that second line?

13 A [MR. KOHLMANN]: "The Islamic Army, the liberation of the
14 holy places."

15 Q [MR. TRIVETT]: Now, that doesn't say al Qaeda?

16 A [MR. KOHLMANN]: No, it doesn't.

17 Q [MR. TRIVETT]: Two lines underneath it references the Holy
18 Ka'ba operation. Can you give a reference point as to what the Holy
19 Ka'ba is?

20 A [MR. KOHLMANN]: Yes. The Ka'ba is a shrine inside of the
21 holy mosque in Mecca in Saudi Arabia. It is considered possibly the
22 holiest shrine in all of Islam, and it is an essential part of the

1 Haj. If you go on a Haj, if you go on a pilgrimage to Mecca, the
2 holy mosques, the Ka'ba is kind of the center of the world for you.
3 In this case, it's referring, again, to--when it says the Holy Ka'ba
4 operation, this is the operation, the '98 embassy bombings named in
5 honor of the Holy Ka'ba.

6 Q [MR. TRIVETT]: Now, does this document have seven distinct
7 reasons for why the attack occurred?

8 A [MR. KOHLMANN]: Yes.

9 Q [MR. TRIVETT]: And the first one--I'm just going to read this
10 to you briefly so you can explain it. "The evacuation of all
11 American Western forces, including civilians, from the lands of
12 Muslims in general and from the Arabian Peninsula in particular."
13 Is this consistent with any other document that Usama bin Laden or al
14 Qaeda had released?

15 A [MR. KOHLMANN]: I would say it's a fusion, actually, of both
16 the '96, August 1996 fatwa from Usama bin Laden demanding that
17 American soldiers leave the Arabian Peninsula and the August '02--the
18 February 1998 fatwa, which expanded on that to include also American
19 civilians. But it is almost verbatim from those two fatwas.

20 [END OF PAGE]

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1 Q [MR. TRIVETT]: And directing your attention to the third
2 reason, it seems to mention individuals' names; Sheikh Omar Abdur
3 Rahman, Sheikh Salman al-Ouda, Sheikh Safar al-Hawali. Are those
4 people ever referenced by Usama bin Laden or al Qaeda as one of the
5 primary reasons for its attacks against the United States?

6 A [MR. KOHLMANN]: Yes. These three particular individuals have
7 been cited by Bin Laden in video recordings and also in written
8 fatwas as being the primary reasons for which Mr. Bin Laden took up
9 arms against the United States; their imprisonment and punishment
10 directed at them.

11 Q [MR. TRIVETT]: And one last one. On number 5, reason number
12 5, to halt all forms of American support for Israel. Is this
13 consistent with either the '96 declaration or 1998 fatwa, or both?

14 A [MR. KOHLMANN]: I think it's consistent with both.

15 Q [MR. TRIVETT]: In fact, do you know the Islamic Army for the
16 Liberation of the Two Holy Places as an alias for al Qaeda?

17 A [MR. KOHLMANN]: I do.

18 Q [MR. TRIVETT]: And how do you know that?

19 A [MR. KOHLMANN]: I know because of the fact that, number one,
20 it is one of the aliases listed in the designation of al Qaeda as a
21 foreign terrorist organization when al Qaeda was initially designated
22 by an Executive Order in October of 1999. The U.S. Government
23 specifically listed the Islamic Army for the Liberation of the Holy

1 Places as a known alias for al Qaeda. I also know from testimony and
2 through exhibits submitted in the *United States v. Usama bin Laden,*
3 *et al.*, that this particular fatwa was faxed from al Qaeda members in
4 the United Kingdom, apparently at the request of Usama bin Laden.

5 Q [MR. TRIVETT]: And, specifically, is this declaration for
6 both embassies or only one of them?

7 A [MR. KOHLMANN]: I believe this is only one of them.

8 Q [MR. TRIVETT]: And do you know what embassy this was taking
9 credit for the attack on?

10 A [MR. KOHLMANN]: I believe this is the embassy in Kenya.

11 CTC [MR. TRIVETT]: And can I just refer the witness to the
12 second paragraph.

13 Q [MR. TRIVETT]: Is it indicated anywhere in the second
14 paragraph which one this is?

15 A [MR. KOHLMANN]: Yes, it is Kenya. The Islamic Army for the
16 Liberation claims responsibility for the bombing in Nairobi.

17 CTC [MR. TRIVETT]: I would now like to propose to the Military
18 Judge the next prosecution exhibit in order and ask that, with his
19 permission, it be shown to Mr. Kohlmann.

20 MJ [CAPT ALLRED]: You may. It's another document, 128.

21 Q [MR. TRIVETT]: Mr. Kohlmann, are you familiar with the
22 document on your screen?

23 A [MR. KOHLMANN]: Yes, I am.

1 Q [MR. TRIVETT]: What do you know it to be?

2 A [MR. KOHLMANN]: This is yet another translation of a
3 government exhibit submitted in the case *United States v. Usama bin*
4 *Laden, et al.*, in the Southern District of New York, in 2001.

5 Q [MR. TRIVETT]: And, specifically, it appears to be very
6 similar in the fact that there are seven demands. Are those seven
7 demands identical to the demands in the other?

8 A [MR. KOHLMANN]: Virtually identical, yes.

9 Q [MR. TRIVETT]: And, specifically, what embassy was this
10 taking credit for the attack on?

11 A [MR. KOHLMANN]: This was claiming responsibility for the
12 attack on the embassy Dar es Salaam, Tanzania.

13 Q [MR. TRIVETT]: In the second paragraph, where it says, "The
14 operation was carried out by a man from the land of Kinau, who is a
15 member of the Martyr Abdullah Azzam Company, of the Seventh Battalion
16 of the liberation of the al-Aqsa Mosque."

17 Who do you know Martyr Abdullah Azzam to be?

18 A [MR. KOHLMANN]: Sheikh Abdullah Azzam was the founder of the
19 Arab mujahideen movement in Afghanistan, and he's a founding Shura
20 Council member of al Qaeda, not to mention probably the largest
21 inspiration behind Usama bin Laden's decision to join the jihad in
22 Afghanistan.

23

1 Q [MR. TRIVETT]: And was that the Abdullah Azzam that you
2 reference in Part 1 of "The al Qaeda Plan"?

3 A [MR. KOHLMANN]: The very same.

4 Q [MR. TRIVETT]: And I see that this one is specifically called
5 The Al-Aqsa Mosque Operation.

6 A [MR. KOHLMANN]: Al-Aqsa Mosque, yes.

7 Q [MR. TRIVETT]: Can you please explain what the al-Aqsa Mosque
8 is?

9 A [MR. KOHLMANN]: As I stated earlier, the al-Aqsa Mosque is--
10 you could call it the third holiest shrine in Islam. It is a mosque
11 located in al-Quds, in Jerusalem. And, again, it's known as the
12 al-Aqsa Mosque.

13 CTC [MR. TRIVETT]: I'm going to ask that this exhibit be made--
14 be presented as evidence and shown to the members.

15 CDC [MR. SWIFT]: Without objection, Your Honor.

16 MJ [CAPT ALLRED]: Very well.

17 CTC [MR. TRIVETT]: I would ask that the next prosecution
18 exhibit number in order be made available to the Military Judge and,
19 with his permission, the witness.

20 MJ [CAPT ALLRED]: Very well.

21 Q [MR. TRIVETT]: Mr. Kohlmann, are you familiar with the
22 document that is now on your screen?

23 A [MR. KOHLMANN]: Yes.

1 Q [MR. TRIVETT]: What do you know that to be?

2 A [MR. KOHLMANN]: This is a page from the Federal Register.

3 It's----

4 CDC [MR. SWIFT]: We can skip a foundation on this one, Your
5 Honor. I have no objection.

6 MJ [CAPT ALLRED]: Okay. To its admission?

7 CDC [MR. SWIFT]: To its admission, Your Honor.

8 MJ [CAPT ALLRED]: No objection, then, Prosecution Exhibit 129
9 is admitted into evidence. You may show it to the members.

10 Q [MR. TRIVETT]: Now, specifically anywhere within this
11 document--and by document, I don't mean just this page, this
12 additional page--is there a reference to The Islamic Army for the
13 Liberation of the Two Holy Places as an alias for al Qaeda?

14 A [MR. KOHLMANN]: It's actually on this page. If you look in
15 the second paragraph under where it says, "al Qaeda," it says, "Also
16 known as al Qaeda, also known as the Base, also known as the Islamic
17 Army, also known as the World Islamic Front for Jihad Against Jews
18 and Crusaders, also known as The Islamic Army for the Liberation of
19 the Holy Places."

20 Q [MR. TRIVETT]: And who is responsible in the United States
21 Government for designating foreign terrorist organizations?

22 A [MR. KOHLMANN]: The Department of State.

23

1 Q [MR. TRIVETT]: Now, in your opinion, was the attack on the
2 two embassies directly precipitated by the 1998 fatwa or the '96
3 declaration?

4 A [MR. KOHLMANN]: I believe the attack on the embassies was
5 directly precipitated by the February 1998 fatwa; the reason being is
6 that prior to the 1998 fatwa, there had been no official declaration
7 from Bin Laden--a public declaration, green-lighting the killing of
8 civilians.

9 Before launching operations and undoubtedly the targeting
10 of civilians that would result in a civilian death count, al Qaeda
11 wanted to be very sure that they made everyone aware that civilians
12 would be targeted, civilians would be killed, don't come to us later
13 on and tell us that you didn't--that you didn't know what we were
14 going to do. This is exactly what we're going to do. And they
15 followed--they followed their word.

16 Q [MR. TRIVETT]: Now, very briefly you mentioned that Usama bin
17 Laden had given these fatwas. Is there any type of religious
18 credential that he was supposed to have had before he could give a
19 fatwa?

20 A [MR. KOHLMANN]: A fatwa typically comes from a religious
21 leader but it can also be issued by a political leader. Especially
22 in the modern context, it's become mixed up, where you have sometimes
23 political leaders issuing their own fatwas. But Sheikh Usama bin

1 Laden was not considered an Immam, he's not considered a mullah, he's
2 not considered a religious source. This was a political fatwa.

3 Q [MR. TRIVETT]: Would he ever get blessings from anybody
4 within the al Qaeda Shura Council for any fatwas that he gave that
5 was credentialed?

6 A [MR. KOHLMANN]: Oh, yes. There was a fatwa committee. There
7 was a religious committee within al Qaeda itself, not to mention bin
8 Laden also received endorsements or messages of support from radical
9 clerics from really around the world, but very particularly from the
10 Arabian Peninsula.

11 Q [MR. TRIVETT]: And who was primarily responsible on the fatwa
12 committee for al Qaeda for blessing fatwas from Usama bin Laden?

13 A [MR. KOHLMANN]: I couldn't tell you who was personally
14 involved. There was--it was a collective responsibility. And,
15 again, you know, it's very important to emphasize that as much as the
16 religious committee played an important role in this, the fatwa
17 committee, al Qaeda very much also relied on clerics from the Arabian
18 Peninsula and elsewhere who encouraged their followers to follow Bin
19 Laden. It gave the religious justification that Bin Laden couldn't
20 give on his own.

21 [END OF PAGE]

1 Q [MR. TRIVETT]: In 1998, in your opinion, did al Qaeda
2 consider the attacks on the embassy to be part of an armed conflict
3 that it was engaged in with the United States?

4 A [MR. KOHLMANN]: They considered it part of their holy war.

5 Q [MR. TRIVETT]: Are you aware that in the '98 embassy bombings
6 that civilians were specifically targeted?

7 A [MR. KOHLMANN]: Yes, they were.

8 Q [MR. TRIVETT]: Do you know if the suicide bombers were
9 wearing military uniforms?

10 A [MR. KOHLMANN]: No, they were not.

11 Q [MR. TRIVETT]: Do you know if they were carrying their arms
12 openly?

13 A [MR. KOHLMANN]: They were not.

14 Q [MR. TRIVETT]: Did the United States retaliate against this
15 attack?

16 A [MR. KOHLMANN]: Retaliate for the attack?

17 Q [MR. TRIVETT]: Yes. Did the United States respond in any way
18 militarily after the 1998 embassy bombings?

19 A [MR. KOHLMANN]: Yes, they did.

20 Q [MR. TRIVETT]: How long after the bombings?

21 A [MR. KOHLMANN]: On August 21st, 1998.

22

23

1 Q [MR. TRIVETT]: And do you know specifically who the United
2 States targeted in its response on August 21st, 1998?

3 A [MR. KOHLMANN]: Yes.

4 Q [MR. TRIVETT]: What were the specific targets and who was the
5 intended target of those missile attacks?

6 A [MR. KOHLMANN]: There were two targets. The first target
7 were al Qaeda training camps along the Afghan-Pakistani border, camps
8 where al Qaeda recruits were being trained, including some of the al
9 Qaeda recruits responsible for executing the 1998 East Africa embassy
10 bombings.

11 Secondly, the United States military also attacked the
12 Al-Shifa pharmaceutical plant in Khartoum, Sudan, which at that time
13 was suspected of producing precursors for chemical weapons on behalf
14 of al Qaeda.

15 CTC [MR. TRIVETT]: With Your Honor's permission, sir, I'd like
16 to submit Part 6 of "The al Qaeda Plan."

17 MJ [CAPT ALLRED]: Go ahead, please.

18 **[The video was played at 4:14:38.]**

19 **[The video was stopped at 4:24:48.]**

20 **[END OF PAGE]**

1 Q [MR. TRIVETT]: Other than the USS COLE propaganda film, what,
2 if anything, did al Qaeda do to memorialize the attack on the USS
3 COLE?

4 A [MR. KOHLMANN]: Well, they celebrated the two individuals who
5 carried out the suicide attack on the COLE. And, in fact, at one
6 point they named a guesthouse for terrorist recruits after one of the
7 individuals who carried out the suicide mission targeting the COLE.

8 Q [MR. TRIVETT]: And do you recall the name of that guesthouse?

9 A [MR. KOHLMANN]: Yes. The suicide bomber, his real name is
10 Ibrahim al-Thawar, but his kunya was Nibras, so they called the guest
11 house the Nibras guesthouse.

12 Q [MR. TRIVETT]: In your opinion, was it widely known among al
13 Qaeda circles that the attack on the USS COLE was carried out, in
14 fact, by al Qaeda?

15 A [MR. KOHLMANN]: It was widely known because of Usama bin
16 Laden himself at Tarnak Farms, the video you saw there with Bin Laden
17 speaking about the COLE, that was actually at Tarnak Farms, the Abu
18 Obaidah camp. Bin Laden himself was speaking about al Qaeda's role
19 in this. al Qaeda members you saw discussing this obviously were
20 familiar with these attacks, familiar with al Qaeda's role. It was
21 no secret.

1 Q [MR. TRIVETT]: In general, did al Qaeda keep its successful
2 attacks from its members?

3 A [MR. KOHLMANN]: No. It widely--it publicized them as widely
4 as possible, both to its members, eventual recruits, to its enemies.
5 Again, this is a value of propaganda.

6 Q [MR. TRIVETT]: In your opinion, was this--was this attack in
7 response to the 1996 declaration of war, the 1998 fatwa?

8 A [MR. KOHLMANN]: Well, again, I--I think you could say it's a
9 fusion of those two fatwas. Here you have an attack specifically
10 directed at the U.S. military in the Arabian Peninsula, which
11 certainly falls in line with the 1996 fatwa. But you really--I think
12 you have to understand these fatwas as part of an escalation of the
13 conflict with the United States. They are part and parcel of each
14 other, and they can't be separated. This is--this operation I think
15 you can say was the result of both of these fatwas.

16 Q [MR. TRIVETT]: So in your opinion, did al Qaeda consider the
17 attack on the USS COLE as part of the ongoing armed conflict that
18 they had with the United States?

19 A [MR. KOHLMANN]: It was a high point for them.

20 Q [MR. TRIVETT]: How exactly did this attack happen? Can you
21 describe it?

22 A [MR. KOHLMANN]: Yes. Two individuals boarded a small vessel
23 in Aden. The vessel had explosives hidden underneath it so you

1 couldn't see it from above. The vessel approached the USS COLE, at
2 which point the two individuals aboard the vessel began smiling and
3 waving at the soldiers on board the COLE. The--the soldiers on board
4 the COLE believed that this vessel was coming with honest intentions
5 and that they were traders or that they were seeking to remove
6 garbage from the vessel. They allowed the vessel to approach the
7 COLE midship. When it approached, in just about the center, they
8 detonated the explosive and it knocked a hole in the vessel.

9 Q [MR. TRIVETT]: Were the two suicide bombers wearing military
10 uniforms?

11 A [MR. KOHLMANN]: No, they were not.

12 Q [MR. TRIVETT]: Were they carrying their arms openly?

13 A [MR. KOHLMANN]: No.

14 Q [MR. TRIVETT]: Were the explosives readily visible in the
15 boat?

16 A [MR. KOHLMANN]: No. They were--again, they were smiling and
17 waving. They were pretending like they had friendly intentions.

18 TC [MR. TRIVETT]: Sir, perhaps this is a good time to bring up
19 on the record, outside the presence of the jury, another issue
20 because I want to continue on to the next segment.

21 MJ [CAPT ALLRED]: Okay. Why don't we excuse the members for a
22 few minutes, then?

23

1 BAILIFF: All rise **[all persons did as directed and the members**
2 **withdrew from the courtroom].**

3 **[The military commission terminated and the R.M.C. 803 session**
4 **commenced at 1629, 28 July 2008.]**

5 MJ [CAPT ALLRED]: Okay. The members have withdrawn from the
6 courtroom. Please be seated **[all persons did as directed].**

7 CTC [MR. TRIVETT]: The prosecution is just looking for some
8 guidance in regards to the next section. Your Honor said that
9 certain parts of the section wouldn't be admissible based on
10 prejudice. It wasn't clear that that was the entire section.

11 The prosecution's position is that we need to establish the
12 armed conflict, we need to establish the existence of the armed
13 conflict and al Qaeda's responsibility for 9/11 attacks.

14 If there's, you know, certain segments that Your Honor is
15 concerned about, we may be able to find a flexible way around it in
16 the immediate term. Depending on how much there is that's
17 prejudicial, we may need to go back and actually edit that part of
18 the presentation, but it's an important part of the government's
19 proof in its case in chief, so we wanted some guidance.

20 MJ [CAPT ALLRED]: Well, I mean, the point I was concerned about
21 is the--the--the images of the planes flying into the buildings and
22 people screaming. On more reflection, I'm not sure they're any more
23 prejudicial than the videos of the Africa bombings or the COLE

1 attack, but--but for those offered to show, I guess. I don't want--I
2 don't want there to be an emotional appeal to the members. That's
3 what I'm trying to avoid by not showing those segments.

4 CTC [MR. TRIVETT]: Yes, sir. And the prosecution was very
5 careful in trying to establish the evidence to show, one, that
6 attacks happened on the World Trade Center, that they happened on the
7 Pentagon, and that Flight 93 was crashed.

8 We intentionally kept out anything referring to people
9 jumping out of windows or anything like that intentionally because
10 what we needed to show is that there is an armed conflict going on
11 between the United States and between al Qaeda.

12 Part of what Mr. Corn testified earlier to is that you have
13 to look to the nature and the severity of the attacks.

14 Obviously, not every attack would constitute an armed
15 attack to which the law of war would apply. The prosecution's
16 position is that 9/11 obviously was of sufficient magnitude to do
17 that.

18 In order to--the best proof of that is to allow the members
19 to see the nature of the attack, establish al Qaeda's responsibility
20 for that attack and establish that that was part of an ongoing armed
21 conflict that al Qaeda had with the United States.

22 And so, clearly, one of the conspiracies that the accused
23 is charged with is the conspiracy to commit terror. One of those is-

1 -in order to prove that, we have to show that, in fact, their actions
2 did cause or would have caused terror--would have terrorized
3 individuals if they saw that. That's clearly part of the motive of
4 terrorism and how that's different than attacking civilians is that
5 they are intentionally trying to terrorize a civilian population in
6 order to effectuate the public policy of a government.

7 So, specifically, we believe that the reactions, you know,
8 although conceivably are emotional, that's sort of part of the war.
9 That's why we're here at a war crimes tribunal. That's why we have
10 members of the military who are specifically--they have certain
11 expertise in military matters. It's not to be concerned with on a
12 403 level like the prejudice to a lay jury would be. These people
13 are trained in military operations, and war is hell.

14 We did try to limit it to the extent we could to just prove
15 our point. We think that we--we've done that correctly in section 7,
16 but to the extent that Your Honor has specific concerns about any one
17 portion or another, we can try to work out some--some type of
18 compromise, but we think it is a very important part of the
19 prosecution's case in chief.

20 MJ [CAPT ALLRED]: Okay. Mr. Swift?

21 CDC [MR. SWIFT]: Well, three parts. I--first, in looking at a
22 403 balancing, it's been our argument through Mr. Corn and it will be

1 our argument and position in this court and earlier motions that
2 September 11th is the start-off day.

3 So now we're going to prove with gruesome photos something
4 that we've acceded to, and I'm not sure what the probative value of
5 that is when we're in concurrence at that point.

6 The probative value--we say to the court, though, we will
7 keep our objection that the bodies at Mogadishu and the bodies there
8 did not further a finding of whether there was a war or not.

9 And I think it's--the easiest way is to sit there and look
10 at, for instance, a news video that's available at the time of 9/11
11 with an explosion and a crash. Gee, it's magnified, et cetera. We
12 now need screaming, bodies, et cetera to show that it was terrorism?
13 This is trying to terrorize the members; it's not going to further
14 anything that's a necessity, an element in the government's case.
15 403 was specifically designed to avoid this.

16 Were Mr. Hamdan particularly charged with the murder of one
17 of those individuals, they might get close. He's not charged even
18 with the murder of one of those individuals in particular.

19 And so I don't see how we get even close to the 403
20 balancing test with regards to those photos and that portion of it.
21 The events of 9/11 are extraordinarily well known, and we haven't----

22 MJ [CAPT ALLRED]: Are you willing to stipulate and you concede,
23 then, that the attacks of 9/11 were the work of al Qaeda?

1 CDC [MR. SWIFT]: Absolutely.

2 MJ [CAPT ALLRED]: Okay. And you concede that they were----

3 CDC [MR. SWIFT]: ----With certain members of al Qaeda, yes.

4 MJ [CAPT ALLRED]: And to incite terror in the population or----

5 CDC [MR. SWIFT]: Absolutely.

6 MJ [CAPT ALLRED]: --influence the action of the government?

7 CDC [MR. SWIFT]: Absolutely.

8 MJ [CAPT ALLRED]: Is that what you're trying to prove, then,

9 Mr.----

10 CTC [MR. TRIVETT]: Certainly that's some of what we are trying

11 to prove.

12 MJ [CAPT ALLRED]: Well----

13 CTC [MR. TRIVETT]: I don't--I don't know that it satisfies

14 everything. I mean, we have a lot of different provisions that we

15 have to satisfy beyond a reasonable doubt. Just saying that that was

16 committed by al Qaeda doesn't--doesn't get you there completely.

17 I mean, part of it is the severity of the attack itself

18 that's necessary. I mean, we would need a full stipulation that, you

19 know, severity of the 9/11 attacks, both by the World Trade Center,

20 and the Pentagon, and 93, were all sufficient to establish armed

21 conflict.

22 That's our argument, certainly, but defense has fought us,

23 you know, on that issue for as long as possible. Even Professor Corn

1 has said--he seemed to indicate that it's not their attacks that
2 matter in regard to the armed conflict; it's our response to it.
3 That's not the prosecution's position. We don't believe that that's
4 correct. But we are left in the situation of having to prove the
5 armed conflict. This is an important part of that.

6 MJ [CAPT ALLRED]: Okay. I'm going to overrule the defense
7 objection. I think I'll let the whole segment be played, in part
8 because on balance the other depictions of the other attacks are at
9 least as graphic, and because the government has edited out the----

10 CDC [MR. SWIFT]: We would note for the record, Your Honor, that
11 we did not accede to that, that we objected to those sections as
12 well.

13 MJ [CAPT ALLRED]: I appreciate that. I do. I'll let you play
14 the entire Part 7 subject to any hearsay objection or any other
15 objection that the defense may have.

16 Okay. Are we ready to call the members back in?

17 **[The R.M.C. 803 session terminated and the military commission**
18 **commenced at 1636, 28 July 2008.]**

19 BAILIFF: All rise **[all persons did as directed and the members**
20 **entered the courtroom].**

21 MJ [CAPT ALLRED]: Thank you. Please be seated **[all persons did**
22 **as directed].**

23 Mr. Trivett, please continue your examination.

1 CTC [MR. TRIVETT]: Thank you, sir.

2 With Your Honor's permission, we'd like to show Part 7 of
3 the movie and have it published to the members.

4 **[The video was played at 4:37:00.]**

5 **[The video was stopped at 5:02:29]**

6 Q [MR. TRIVETT]: Mr. Kohlmann, at the very beginning of section
7 7, you reference a date where Usama bin Laden was talking about a
8 pending attack as being the summer of 2001. How did you know that it
9 was the summer of 2001?

10 A [MR. KOHLMANN]: It was cited so in the As-Sahab video. It
11 was--the explanation was, is that these were original recordings of
12 Usama bin Laden speaking at al Qaeda guesthouses and training camps
13 during the summer of 2001 and lead up to 9/11. In other words, to
14 try to prove that this attack not only was carried out by al Qaeda
15 but that al Qaeda leader had advanced knowledge of the attack and
16 that even al Qaeda members had advanced knowledge that something was
17 going to happen. In the words of Adam Gadhan, everyone knew
18 something was going to happen.

19 Q [MR. TRIVETT]: Were they concerned that they may not get
20 credit for the 9/11 attacks?

21 A [MR. KOHLMANN]: Yes, they were concerned that the attacks,
22 where the conspiracy theorists would surmise that the attacks were
23 the work of Mossad or the work of the CIA or something. And al Qaeda

1 actually is very upset about those allegations because there were
2 similar allegations about the 1998 U.S. embassy bombings and about
3 the COLE operation.

4 And they were very determined that this operation would be
5 credited to them and that there would be no doubt in anyone's mind
6 that al Qaeda was responsible for this, that al Qaeda members knew
7 what they were doing, they were not lured into an operation in which
8 they didn't know what the ultimate outcome was, that all the
9 hijackers, all those involved in the operation had full knowledge
10 that they would be dying in the operation, they would be killing
11 civilians, they would be killing civilians inside the United States.

12 Q [MR. TRIVETT]: Now, in two of those slides specifically for
13 Flight 11 and Flight 93, there was an individual depicted in the top
14 right-hand corner of the screen that seemed to be moving. It was an
15 animated movie but there was no sound. Could you please explain what
16 that was?

17 A [MR. KOHLMANN]: Well, for Flight 93, that was a video of Ziad
18 Jarrah, and the other was a video of Mohamed Atta.

19 Q [MR. TRIVETT]: Now, that--had that videotape been publicly
20 released?

21 A [MR. KOHLMANN]: No.

1 Q [MR. TRIVETT]: How did you obtain that video?

2 A [MR. KOHLMANN]: I was given a copy of that videotape by the
3 Office of Military Commissions.

4 Q [MR. TRIVETT]: Was there anything else on that videotape?

5 A [MR. KOHLMANN]: Yes, there was.

6 Q [MR. TRIVETT]: What else was on that videotape?

7 A [MR. KOHLMANN]: Elsewhere on that videotape, which is widely
8 known as the Eid Al Fidr tape----

9 CDC [MR. SWIFT]: Objection, Your Honor. And I'd like an
10 Article 39(a) session with you.

11 MJ [CAPT ALLRED]: Well, it's 1700. Why don't we just re--let
12 the members go for the evening and take this up tomorrow morning?
13 Shall we do that? How much longer do you think your examination will
14 take?

15 CTC [MR. TRIVETT]: Ten minutes, sir. I'm almost done. I can
16 probably----

17 MJ [CAPT ALLRED]: Well, the defense will need time tomorrow. I
18 think this is a good time to call it a day. We'll excuse the members
19 then until 8:30 tomorrow morning.

20 BAILIFF: All rise **[all persons did as directed and the members**
21 **withdrew from the courtroom].**

22 **[The military commission terminated and the R.M.C. 803 session**
23 **commenced at 1705, 28 July 1008.]**

1 MJ [CAPT ALLRED]: Thank you. Please be seated **[all persons did**
2 **as directed]**.

3 CDC [MR. SWIFT]: Your Honor, I----

4 MJ [CAPT ALLRED]: Okay, the members have withdrawn from the
5 courtroom.

6 CDC [MR. SWIFT]: Your Honor, I anticipate that the witness is
7 about to testify that the Al Fitr video that the prosecution
8 recovered, as the pictures of my client, that have been identified as
9 my client, is also part of the video, and thereby putting a link that
10 somehow he may have been part of or seen those. By merely my saying
11 that, gee, a video that we gave to you had a different parts that
12 we've edited in at different places, and I don't think that that--I
13 think it's extraordinarily un----

14 MJ [CAPT ALLRED]: Haven't we already seen this video?

15 CDC [MR. SWIFT]: We have.

16 MJ [CAPT ALLRED]: The excerpts in which your client has been
17 identified?

18 CDC [MR. SWIFT]: We have seen that video. What the--I presume
19 they're going to put out is that, gee, we've used part of it, not the
20 part with your client, but another part of the video in this one,
21 somehow drawing that there's a link between the two. (A), that
22 there's no foundation that there's a link between the two; and, (B),
23 that my client had any knowledge, et cetera. And that the suggestion

1 is, (A), the fact that they're on the same page is not relevant, and
2 the fact that the prosecution gave him part of it and he used a
3 different part of the video is not relevant to the members for
4 consideration, and it's unduly prejudicial under 403.

5 MJ [CAPT ALLRED]: Well, I don't know what the answer is going
6 to be; but, Mr. Trivett, can you tell me where you're going?

7 CTC [MR. TRIVETT]: Yes, sir. We specifically wanted to follow
8 up on the Eid Al Fitr video and, specific, a time/date stamp that's
9 on that video.

10 My understanding is that--I don't want to prejudice what---
11 -

12 MJ [CAPT ALLRED]: All right. Well, Mr. Kohlmann, why don't we
13 excuse you for the day, too? We'll call you back tomorrow morning at
14 8:30 and we'll figure this out. And whatever questions you're asked,
15 those will be the ones that you're asked.

16 WIT [MR. KOHLMANN]: Thank you, Your Honor.

17 MJ [CAPT ALLRED]: Have a good evening.

18 WIT [MR. KOHLMANN]: You, too.

19 **[The witness was excused and withdrew from the courtroom.]**

20 CTC [MR. TRIVETT]: May we have a moment to confer with
21 co-counsel?

22 MJ [CAPT ALLRED]: Sure.

23 **[Discussion off the record.]**

1 CDC [MR. SWIFT]: Your Honor, in addressing this, the videotape
2 is--the Defendant's position--again; I don't think Mr. Kohlmann has
3 been called as a film expert or any other expert.

4 It's our position that the videotape that was eventually
5 recovered is obviously spliced at different parts. It's compilations
6 of different parts of the video. And now the prosecution wants to
7 put the video together with an expert that they proffered not as a
8 film expert and not as----

9 MJ [CAPT ALLRED]: Well, that sounds like a point that we ought
10 to take up. Has the video been spliced?

11 CTC [MR. TRIVETT]: Sir, not to the prosecution's knowledge. It
12 was all found on one tape.

13 Now, but clearly all we were going to do with this witness
14 is elicit the time/date stamp, if he's aware of the time/date stamp.
15 And there's some confusion on the time/date stamp because it's in
16 European dating stamps as opposed to United States dating stamps.

17 So while it looks like it could be August 1st of 2000, we
18 wanted to ensure that the record reflect that it is, in fact, in
19 January of 2000, so----

20 MJ [CAPT ALLRED]: Can you----

21 CTC [MR. TRIVETT]: ----we were soliciting that from--from the
22 witness, and I'm not even certain he knows that. I believe he does,

1 but that's why obviously I didn't want to tell you that in his
2 presence because that would be leading into where we wanted to go.

3 That was the only thing that we wanted to do, was--is to
4 establish that there had been--it was found on another videotape. It
5 was all part of one videotape. We can lay additional foundation if
6 necessary from more on the case statements that it was all found on
7 one videotape. What we're really primarily concerned with is the
8 date/time stamp issue.

9 MJ [CAPT ALLRED]: And--okay.

10 CDC [MR. SWIFT]: Again----

11 MJ [CAPT ALLRED]: The video I remember as the Al Fitr video is
12 the one in which--where Mr. Hamdan was standing very close to Bin
13 Laden and he had the red--he was identified with the red headdress
14 on, and he had a rifle in his hand. Is that the Al Fitr video?

15 CTC [MR. TRIVETT]: It's not, sir. The Al Fitr video is the
16 video where Mr. Hamdan is walking in with Usama bin Laden, he had a
17 white headdress----

18 MJ [CAPT ALLRED]: Oh, okay.

19 CTC [MR. TRIVETT]: ----had a weapon. It's different, though,
20 clearly.

21 MJ [CAPT ALLRED]: Okay.

22 CTC [MR. TRIVETT]: And there's many people----

23 MJ [CAPT ALLRED]: So this----

1 CTC [MR. TRIVETT]: There are many al Qaeda members that have
2 not yet been identified in that movie, as well, that the prosecution
3 may seek to put evidence in, not through this--not through this
4 witness though.

5 MJ [CAPT ALLRED]: So you want this witness to testify that the
6 date on that video was either the 8th of January or the 1st of
7 August?

8 CTC [MR. TRIVETT]: Correct.

9 MJ [CAPT ALLRED]: But he doesn't know which?

10 CTC [MR. TRIVETT]: But I believe--I believe he does know well,
11 and I believe this based on the fact that the Al Fitr celebration on
12 the date it was given in 2000 was in January, as opposed to August.
13 We just wanted to clarify exactly what time the date was. That's all
14 we want to do.

15 MJ [CAPT ALLRED]: Okay. Mr. Swift, the prosecution wants to
16 show for some reason that the video date is January 8th, 2000.

17 CDC [MR. SWIFT]: By the witness's perception of the video.

18 MJ [CAPT ALLRED]: Are these the numbers that kind of appear
19 automatically in the corner----

20 CTC [MR. TRIVETT]: Yes, sir.

21 MJ [CAPT ALLRED]: ----up there by the video camera itself?

22 CTC [MR. TRIVETT]: Yes, sir.

23 CDC [MR. SCHNEIDER]: Assuming it's correct.

1 CDC [MR. SWIFT]: So----

2 MJ [CAPT ALLRED]: I don't--I don't know how that changes. I
3 mean, I'm sure there are people who know how to work that stuff.

4 CDC [MR. SWIFT]: What I--what I understand the government is
5 going to do is say on the video that they show, what was the date.
6 If that's their question, what is the date of that video, then I
7 don't have an objection; but that's not the question they ask.

8 They said we furnished you a video, a portion of which we
9 have put in. This evidence is not--this witness is not foundation
10 for the time stamp of the video. He can't state whether it was
11 spliced or not. He's not the film expert. He's not an agent. He
12 didn't take it. It's basically the prosecution saying we gave you
13 this.

14 If all they're asking is can you read the date on the last
15 section of the video tomorrow as well, and tell me what that date
16 was, then I presume--then we have no objection to that question.

17 MJ [CAPT ALLRED]: Okay.

18 CDC [MR. SWIFT]: Mr. Hamdan shouldn't be referenced in it.

19 MJ [CAPT ALLRED]: Let's see if that's what they're going to do.

20 CTC [MR. TRIVETT]: Well, in regards to the date--in regards to
21 the tape that we provided to Mr. Kohlmann, which had not been
22 publicly released, the fact that that was found at the end of the Al
23 Fitr, the two martyr videos we found at the end of Al Fitr, and we

1 believe that there's other witnesses who can identify Mohamed Atta,
2 Ziad Jarrah, Ramzi Bin al-Shibh, all of those people in the crowd at
3 the time of Al Fitr, all of which went on to have roles in the 9/11
4 attack.

5 MJ [CAPT ALLRED]: Okay.

6 CTC [MR. TRIVETT]: But he's not going to have to do that.

7 MJ [CAPT ALLRED]: Just--well, answer Mr. Swift's question. Are
8 you just going to ask him to read the date on the video?

9 CTC [MR. TRIVETT]: Yes, sir. I'm unclear as to what the first
10 question I asked and he answered was, because I believe the first
11 question was, was that--were those martyred wills found on the tape
12 with Al Fitr. I asked him that. I don't recall if he answered or
13 if----

14 MJ [CAPT ALLRED]: I believe he answered in a yes or a word;
15 right?

16 CDC [MR. SWIFT]: No, he didn't answer because I objected at
17 that moment in time, because now we're having him authenticate a
18 prosecution exhibit that he had nothing to do with seizing,
19 obtaining, et cetera, and he has no ability to lay that foundation.
20 It goes----

21 MJ [CAPT ALLRED]: I----

22

23

1 CDC [MR. SWIFT]: ----to reading a date on a video, because he
2 looks at videos on the Internet. If we need an expert to read the
3 date. I'm not going to make a big deal about it.

4 MJ [CAPT ALLRED]: I don't--I don't know that I can rule on an
5 objection that hasn't yet been raised to a question that hasn't yet
6 been asked.

7 CDC [MR. SWIFT]: Yes, sir.

8 MJ [CAPT ALLRED]: When we come back in the morning, it sounds
9 like if you ask Mr. Kohlmann what was the date on the videotape and
10 he said January 8th, then you can keep asking questions; is that
11 right?

12 CDC [MR. SWIFT]: He could ask that question. I don't know what
13 other questions he would ask after that, but, yeah----

14 MJ [CAPT ALLRED]: I think that's all he wants to get from this
15 witness is the date----

16 CTC [MR. TRIVETT]: Yes, sir.

17 MJ [CAPT ALLRED]: ----the January 8th date.

18 CTC [MR. TRIVETT]: So to the extent we want to go further,
19 we'll go further with another witness who has more competency on that
20 issue.

21 MJ [CAPT ALLRED]: Okay. So it looks like maybe there's no
22 objection if the--that's where the government's going.

23 CTC [MR. TRIVETT]: Sir, we have a witness to bring up.

1 MJ [CAPT ALLRED]: Um-hum.

2 CTC [MR. TRIVETT]: The prosecution intends to call John Miller,
3 who took the ABC interview of Usama bin Laden in 1998. He just got
4 on the island today. I know the defense wants to speak with him. We
5 haven't had time to sit down with him.

6 And the issue with him is he needs to go--he needs to be on
7 a plane by 11:30 tomorrow. So we would like to be able to take him
8 right first thing in the morning, even if it's out of order.

9 I understand that may interfere with either my finishing my
10 direct, but I think I only have about 10 or 15 more minutes. I
11 thought we would ask for the Court's consideration in that, just so
12 we----

13 MJ [CAPT ALLRED]: Well, listen, I'm happy to let you take a
14 witness out of order. I'm sure Mr. Swift wants more than 10 or 15
15 minutes with Mr. Kohlmann, so maybe we can take----

16 CDC [MR. SCHNEIDER]: Maybe we can get you General Altenburg's
17 plane. We're happy to accommodate.

18 MJ [CAPT ALLRED]: Okay. Why don't you work that out with the
19 defense? I think that--so you're proposing--so you wanted to finish
20 Mr. Kohlmann tonight so you can take this other witness first thing
21 in the morning? It's too late for that.

22 CTC [MR. TRIVETT]: Yes, sir. I mean----

23

1 MJ [CAPT ALLRED]: We'll take that correspondent first thing in
2 the morning and let you pick up with Mr. Kohlmann after that.

3 CTC [MR. TRIVETT]: Yes, sir.

4 MJ [CAPT ALLRED]: If that's your priority.

5 CTC [MR. TRIVETT]: Yes, sir.

6 MJ [CAPT ALLRED]: Okay.

7 CTC [MR TRIVETT]: I think there might be additional issues that
8 co-counsel wants to address with you regarding matters--business----

9 MJ [CAPT ALLRED]: Now or in the morning?

10 TC [LCDR STONE]: In the morning, sir.

11 MJ [CAPT ALLRED]: Okay. So are we ready to recess for the
12 evening?

13 CTC [MR. TRIVETT]: Yes, sir.

14 CDC [MR. SWIFT]: We would like a brief 802 with you----

15 MJ [CAPT ALLRED]: Sure.

16 CDC [MR. SWIFT]: ----regarding scheduling, afterwards, Your
17 Honor.

18 BAILIFF: All rise **[all persons did as directed]**.

19 MJ [CAPT ALLRED]: The Court will be in recess, then.

20 **[The military commission recessed at 1715, 28 July 2008.]**

21 **[END OF PAGE]**